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9 Attorneys for Plaintiff RESH, INC.

7 UNITED STATES DISTRICT COURT
 8 NORTHERN DISTRICT OF CALIFORNIA

9 RESH, Inc. a California corporation,
 10

11 Plaintiff,

12 vs.

13 SKIMLITE MANUFACTURING
 14 INC., a California corporation;
 15 JAMES R. CONRAD, an individual;
 16 BARRETT CONRAD, an individual;
 17 and DOES 1 THROUGH 5,
 18 inclusive,)

19 Defendants.

Civil Action No. _____

**COMPLAINT FOR PATENT
 INFRINGEMENT**

JURY TRIAL DEMANDED

18 **OVERVIEW**

19 1. This Complaint may be longer than most patent infringement
 20 complaints. There are several reasons for this. Many or all of those reasons are
 21 based on actions that Defendants have taken over the past several years (as
 22 hopefully will become apparent upon review of the Complaint). Those reasons
 23 include at least the following:

24 (a) Defendants have asserted that they have evidence of allegedly
 25 invalidating prior art, but they have refused to share with Plaintiff critical
 26 pieces of that alleged “evidence”;

27 (b) this is one of the rare patent infringement cases in which Defendants’
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1 actions and the relevant facts and law show that pre-issuance damages
2 are appropriate. Plaintiff attempts herein to describe the relevant facts
3 and law on that issue, to support the Court awarding those pre-issuance
4 damages to Plaintiff;

5 (c) Over the past several years, Defendants have been infringing other of
6 Plaintiff's related patents, and the details of Defendants' actions in that
7 regard support the Court finding that Defendants' infringement is willful,
8 supporting the Court's award to Plaintiff of enhanced damages; and

9 (d) Defendants have admitted both (i) infringement and (ii) that their
10 infringing products are becoming Defendants' customers' "favorites,"
11 and Plaintiff attempts herein to adequately document those admissions
12 (to save the Court and the parties future time and effort litigating those
13 issues).

14 2. In view of the Complaint's length, Plaintiff has included this
15 introductory Overview. The remainder of the Complaint is intended to provide
16 sufficient details to enable the Court and the parties to efficiently litigate this
17 dispute. In addition to the reasons listed above, Plaintiff has attempted in the
18 Complaint to set forth some of the good faith bases (in both fact and law) for the
19 relief Plaintiff seeks from the Court. In addition, Plaintiff hopes that the detail in
20 the Complaint (and the correspondingly detailed Answer required from
21 Defendants) will eliminate or reduce discovery and/or motion practice for at least
22 some of these issues, thereby reducing the overall burden of this lawsuit for both
23 the Court and the parties.

24 3. Almost 70 years ago (around 1954), Robert Conrad (Defendant Jim
25 Conrad's father and Defendant Barrett Conrad's grandfather) started their family
26 business Defendant Skimlite, and began making telescoping swimming pool poles.

27 4. Just a few years later, around 1959, Defendant Jim Conrad began
28

1 working at Skimlite. Upon information and belief, Defendant Jim Conrad has
2 worked at Skimlite his entire adult life since then, through the ensuing six decades.
3 Defendant Barrett Conrad began working at Skimlite more recently, and is the
4 third generation in their family to be involved in the Skimlite pool pole business.

5 5. Starting in the 1950s, and continuing for more than 60 years, the
6 Defendants made/manufactured/sold telescoping swimming pool poles, all of
7 which were “locked” at a desired length by the user twisting or clamping the
8 telescoping tubes. Some of Defendants’ poles had elliptic cross-sections on the
9 telescoping tubes, and when a user twisted those tubes, those elliptical shapes
10 “locked” the tubes with each other. In other models, Defendants’ poles included
11 one or more internal cam elements that “locked” when the user twisted the tubes
12 relative to each other. Defendants also added external clamps and/or nuts on some
13 models, to accomplish or improve the “lock” of the tubes at a desired length.

14 6. When Defendants were launching their dominance of the swimming
15 pool pole industry (making those twisting/clamping telescoping swimming pool
16 poles), Plaintiff’s inventor Eric Resh had not even been born. It was not until more
17 than 35 years later (in 1989) that Mr. Resh even began working as a pool man,
18 cleaning swimming pools for homeowners in southern California. When cleaning
19 his customers’ pools, Mr. Resh even used twisting/clamping poles made and sold
20 by Defendants.

21 7. An additional 25 years later (in 2012), Mr. Resh and his company
22 introduced their own telescoping swimming pool pole. It was the first pole Mr.
23 Resh and/or Plaintiff had ever made and/or sold. Since then, the Patent Office has
24 issued three separate patents to Plaintiff for Plaintiff’s pole inventions.¹ Among
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26 ¹ This suit is focused on Plaintiff’s U.S. Pat. No. 11,141,852 (the ‘852 Patent;
27 Exhibit A hereto). Because of the infringement and past/ongoing behavior by
28 Defendants and others described herein (among other reasons), Plaintiff has filed
additional pending related patent applications. Plaintiff hopes and expects that the

1 other features, Plaintiff's new pole inventions get rid of the need for twisting or
 2 clamping to set the pole's length. For that reason, Plaintiff's inventions are a stark
 3 challenge to Defendants' "old style" products and to Defendants' decades of
 4 making and selling those old-style twisting/clamping poles.

5 8. As mentioned above, Defendant Jim Conrad has spent his entire adult
 6 life working at Defendant Skimlite, making and selling swimming pool poles. As
 7 discussed in more detail in Exhibit B,² Jim Conrad was so shocked by Plaintiff's
 8 pole inventions that he gasped when he first saw them.

9 9. A few years after seeing Plaintiff's ground-breaking pole inventions,
 10 Defendants began copying those inventions, and Defendants' ongoing and repeated
 11 copying now has prompted the present lawsuit. Upon information and belief,
 12 Defendants' infringement began in earnest at least as early as 2015. After seeing
 13 the success of Plaintiff's new-style poles, Defendants secretly began copying
 14 Plaintiff's swimming pool pole inventions. Within months after Plaintiff obtained
 15 a first patent for Plaintiff's pole inventions (in late 2017), Plaintiff became aware
 16 of Defendants' previously-secret copying. Plaintiff sued Defendants in 2018 for
 17 infringing that first patent, and forced Defendants to stop making the Defendants'
 18 then-existing version of Plaintiff's pole inventions.

19 10. Plaintiff recently obtained two additional patents on Plaintiff's pole
 20 inventions. **Defendants have at various times infringed all three of Plaintiff's**
 21 **swimming pool pole patents.** Although Defendants have indicated that they have
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23 Patent Office will grant additional protection for the many aspects of Plaintiff's
 24 inventions that Defendants (and those other infringers) obviously find to be so very
 25 valuable that they all have copied Plaintiff's inventions.

26 ² Exhibit B is a true and correct copy of portions of Plaintiff's filings in the
 27 U.S. Patent Office that eventually led the Office to grant the '852 patent. Pages
 28 numbered 124-129 at the bottom (within the body of the copies in that Exhibit B)
 are true and correct descriptions of Defendants James Conrad's initial and
 unrehearsed reaction to seeing Plaintiff's '852 Patent inventions, and a brief
 discussion of related case law regarding the importance of such evidence.

1 stopped infringing one of those patents, Defendants have refused to stop infringing
2 the other patent (the ‘852 Patent). As a result, Plaintiff has no alternatives other
3 than to (a) abandon its most-recent patent, or (b) file this lawsuit.

4 11. Defendants have been aware of Plaintiff’s pending patent claims for
5 years, including by virtue of the parties’ 2018 lawsuit. During all that time,
6 Defendants have **never** offered any argument that Defendants do not infringe that
7 patent. In fact, Defendants instead have effectively admitted that they **do** infringe
8 that patent.

9 12. In fact, it was not until a few months ago (and after the Patent Office had
10 issued that third patent to Plaintiff) that Defendants even alleged **any** “defense” to
11 the ‘852 patent. As mentioned above, Defendants already have admitted that they
12 are infringing the patent. Defendants therefore finally (but only very recently)
13 alleged that the ‘852 patent is invalid. As discussed in further detail below,
14 Defendants’ apparently main allegations are based on evidence that is insufficient
15 as a matter of law.³ Specifically, Defendants have alleged the existence of
16 invalidating prior art, of a third party who allegedly made and used the invention
17 more than 20 years ago. Defendants have only supported their allegations by oral
18 testimony. For over a hundred years, the Supreme Court and other courts have
19 rejected such “oral testimony” as being insufficient to establish prior art for
20 invalidating a patent.

21 13. As a result of admitting their infringement and not having any other
22 meaningfully supported defense, Defendants have been and are willfully infringing
23 Plaintiff’s patent. Plaintiff seeks relief from this Court, to stop that infringement,
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25 ³ Defendants’ apparently “main” allegation of invalidity is based on an alleged
26 “A.G. Pro Pole” (discussed herein). Defendants also included a short list of other
27 potential defenses, none of which appear to be of much potential consequence.
28 Those alleged defenses are such that it seems possible that Defendants may not
even include them as defenses in this lawsuit. If Defendants do, Plaintiff will
address them at that time.

1 to compensate Plaintiff, and to punish Defendants for their ongoing and willful
2 infringement.

3 THE PARTIES

4 14. Plaintiff Resh, Inc. (“Resh”) is a California corporation having a
5 principal place of business at 41725 Elm Street, Suite 103, Murrieta, California
6 92562. Eric Resh and his wife, Jenel Gonzalez Resh, are the principals and owners
7 of Plaintiff Resh, Inc.

8 15. Upon information and belief, Defendant Skimlite Manufacturing Inc.
9 (“Skimlite”) is a corporation existing under the laws of the State of California, with
10 a principal place of business at 1518 Moffett Street, Suite E, Salinas, CA 93905.

11 16. Upon information and belief, Defendant James R. Conrad (“James
12 Conrad” and/or “Jim Conrad”), is an individual residing in or near Salinas, CA, is a
13 principal of Defendant Skimlite, and has a business/service address of 1518
14 Moffett Street, Suite E, Salinas, CA 93905.

15 17. Upon information and belief, Defendant Barrett Conrad (“Barrett
16 Conrad”), is an individual residing in or near Salinas, CA, is a principal of
17 Defendant Skimlite, and has a business/service address of 1518 Moffett Street,
18 Suite E, Salinas, CA 93905.

19 18. The true names and capacities of Doe Defendants 1 through 5 are not
20 known to Resh at this time, and Resh therefore sues them under fictitious names.
21 When the actual identities of Does 1 through 5 are determined, Resh intends to
22 seek leave of Court to amend this Complaint to name such persons as Doe
23 Defendants. Resh is informed and believes, and thereon alleges, that Does 1
24 through 5 participated in the wrongful acts described herein, and are responsible in
25 some way for the wrongful acts alleged herein. Accordingly, as indicated above
26 and depending on the context in which it is used herein, the term “Defendants” is
27 intended to include not only “Skimlite” and “James Conrad” and “Barrett Conrad,”
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1 but also any and/or all other Defendants or any individuals or other entities acting
 2 on behalf of or in coordination with the named Defendants regarding the matters
 3 discussed herein.

4 **JURISDICTION AND VENUE**

5 19. This lawsuit is a civil action for patent infringement arising under the
 6 patent laws of the United States, Title 35, United States Code, and more particularly
 7 under the United States Patent Act 35 U.S.C. §§1 et seq., including 35 U.S.C. §271.

8 20. This Court has subject matter jurisdiction over this action pursuant to 28
 9 U.S.C. §§1331 and 1338(a).

10 21. This Court has personal jurisdiction over the Defendants consistent with
 11 the principles of due process, by virtue of one or more of the following:

- 12 - the Defendants transacting and doing business in this District,
- 13 - because a substantial part of the relevant events occurred in this District,
- 14 and/or
- 15 - because a substantial part of the property that it is the subject of this
- 16 action is situated here.

17 22. Venue is proper in this judicial District pursuant to 28 U.S.C. §1400(b).
 18 Defendants reside in this district, have committed acts of patent infringement in this
 19 district, and have a regular and established place of business in this district.

20 **PATENT-IN-SUIT**

21 **(U.S. PATENT NO. 11,141,852; THE ‘852 PATENT)**

22 23. Resh realleges and incorporates by reference the allegations set forth in
 23 paragraphs 1-22.

24 24. In this lawsuit, Plaintiff is asserting that Defendants have infringed and
 25 are infringing Plaintiff’s U.S. Pat. No. 11,141,852, entitled “Telepole Apparatus
 26 and Related Methods” (the ‘852 Patent).

27 25. On October 12, 2021, the United States Patent and Trademark Office
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1 duly and legally issued the '852 Patent. The '852 Patent is presumed valid and
2 enforceable. A true and correct copy of the '852 Patent is attached as Exhibit A.

3 26. Plaintiff is the assignee of all right, title and interest in the '852 Patent,
4 including all rights to enforce and prosecute actions for infringement and to collect
5 damages for all relevant times against infringers of the '852 Patent. Plaintiff has
6 never authorized Defendants, or any of them, to practice any of the inventions
7 covered by the '852 Patent.

8 27. Among other things, and relevant to this lawsuit, the '852 Patent relates
9 to telescoping poles and related assemblies for cleaning swimming pools. Poles
10 for cleaning swimming pools commonly can be attached to nets and brushes and/or
11 other cleaning tools, and the poles themselves commonly include telescoping tubes
12 (that a user can slide in or out of each other adjust the pole to a desired length).
13 The adjustable length provided by the telescoping tubes allows the user to reach
14 and/or move the cleaning tool across various areas of the pool being cleaned.

28. As mentioned above, prior to Plaintiff's '852 Patent inventions, the length adjustment process typically involved "twisting" and/or "clamping" the tubes into or out of engagement at a selected length. Defendants have made these types of "twisting" and/or "clamping" poles for decades, as shown in the following screenshot/excerpt from Defendants' website⁴:

Defendants' Decades-Old Twisting/Clamping Poles



29. In the photographs above, four show the handle ends of two separate poles crossing each other (the bottom center photograph shows a single pole). As further explained below, the screenshot above has been edited very slightly, to white out the upper right quadrant, because that quadrant is where Defendants

⁴ Because most telescoping swimming pool poles are so long (for example, 8-foot when collapsed is common), it is common for promotional photographs (like the ones here) to only show the "gripping ends" of the poles (not the entire pole). Otherwise, the product itself would be too small to see well in a photograph.

1 display their infringing copycat poles.

2 30. Below is another copy of that same screenshot of Defendants' poles, that
3 has been marked up to illustrate how Defendants' and other prior art "twist/clamp"
4 telescoping swimming pool poles are used. To lock the pole at a selected length,
5 those poles typically require the user to:

6 (a) grasp the two separate tubes (such as at the locations marked 1 and 2
7 on any one of the poles; color-coded to distinguish the "crossed" poles from each
8 other);

9 (b) twist the tubes in opposite directions to "unlock" the tubes (so that
10 the user can slide the poles to a different length);

11 (c) slide the tubes to a desired length/position with respect to each other;

12 (d) twist the tubes in opposite directions to "lock" the tubes (so that the
13 poles will stay at that selected length); and/or
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(e) for some versions with “extra locking” features, operate an external clamp or nut (such as shown by the green arrows below):

Defendants’ Decades-Old Twisting/Clamping Poles
(WITH Mark-Up Showing TWISTING Required to Lock Pole Length)



31. During cleaning of even a single pool, it is common to adjust the pole’s length repeatedly. Each length adjustment of these prior art poles requires first undoing the current “lock,” sliding the tubes to the new length, and resetting the lock using the steps above.

32. These prior art swimming pool poles have other problems besides the complexity of adjusting the poles’ length. For example, because the tubes are just “twisted” into engagement (by friction), sometimes the tubes can “disengage” from each other during the pool cleaning. To avoid that problem, users sometimes keep the tubes “torqued” during use (by applying a twisting pressure on the pole the entire time of using it). On information and belief, the external nuts and clamps

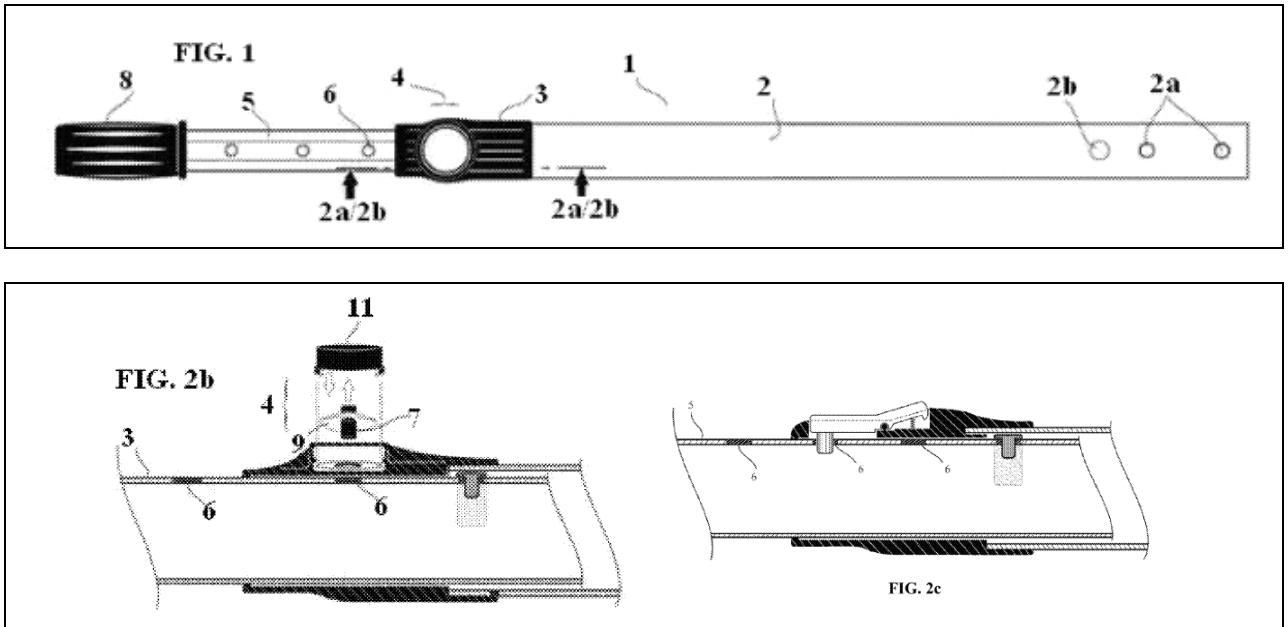
1 were added to try to address that problem, but those features obviously require
2 additional parts and maintenance, and they add weight to the pole assembly.
3 Perhaps as importantly, those nuts/clamps themselves require additional
4 “twisting/clamping” action by the user, to engage/disengage them and try to make
5 the pole’s engagement more secure. Other problems exist. Users sometimes
6 “overtighten” the tubes, making it very difficult to disengage the tubes at a later
7 time (users disengage the tubes to adjust the pole length, or to collapse the pole
8 when the pool cleaning is completed). The complicated unlocking and locking
9 process (to set the pole’s length) requires extra time and effort to reset the pole to
10 the desired length, and (especially cumulatively) can make pool cleaning take more
11 time and be less efficient. For professional pool men cleaning pools for a living,
12 the cumulative extra time/effort required by these prior art poles can reduce the
13 profitability of their businesses.

14 33. Perhaps the worst problem caused by prior art telescoping poles can be
15 that they can cause physical harm to the users. For some users (such as pool men
16 like Mr. Resh in the past, who clean multiple swimming pools every day, as a full-
17 time job), this cumulative and repeated twisting/clamping action sometimes
18 damages their wrists, even causing symptoms as severe as carpal tunnel syndrome.

19 34. In contrast to that twisting and/or clamping action (required by
20 Defendants’ and third-party prior art poles that had been around for decades),
21 Plaintiff’s ‘852 Patent inventions provide an easy-to-use “push button” detent
22 engagement between the pole’s tubes. Plaintiff’s “push button” or “lever lock”
23 detent pole inventions allow users to readily adjust and select the pole length
24 simply by pressing a button or lever, rather than the prior art approach of twisting
25 and untwisting the tubes and/or an external nut, and/or disengaging/engaging a
26 clamp. In addition, Plaintiff’s ‘852 Patent inventions provide a positive
27 engagement at a selected length, so that a user does not have to keep the tubes
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“torqued” during use in order to avoid the tubes disengaging from each other.

35. Below are examples of Plaintiff’s ‘852 inventions, as shown in Figures 1, 2b, and 2c from Plaintiff’s ‘852 patent. Fig. 1 shows an overall view, and Fig. 2b shows details of the ‘852 patent length adjustment inventions shown in Fig. 1. Fig. 2c shows one of the many alternatives ways to practice those inventions (using a lever instead of a button 11 for the length adjustment):



36. In the examples shown above, the user typically attaches a cleaning net or brush or similar tool to one end of an outermost tube (such as via holes 2a at the right end as shown in Fig. 1). The user can adjust the pole’s length (at any time, and at multiple times during a cleaning), by using a button/lever assembly 4 to engage a detent pin into a selected hole 6 along the inner tube’s length. The user can grip and manipulate the pole 1 to do the cleaning, including by using a grip 8 on the opposite end of the pole (on the left end, as shown above) from the cleaning tool.

37. The user can adjust the pole’s length without having to twist or open/close clamps or nuts. Instead, the user just presses and releases a button or lever (such as indicated at 4 and/or in Fig. 2c above). That simple action moves a

1 detent pin in and out of engagement with a selected hole 6 along the length of the
2 inner tube 5. Once engaged in a selected hole 6, the pin keeps the pole set at that
3 selected length (meaning that the tubes are “locked” together, and do not
4 “telescope” to a longer or shorter length). When the user wants to adjust the pole
5 to a different length, the user again presses the button/lever 4 to disengage the pin
6 from the hole 6, and the user then can slide the tubes in or out of each other to a
7 desired new length, where the pin will engage a different hole 6. Preferably a
8 spring in the collar 3 urges the pin into engagement with the selected hole, and the
9 user “overcomes” that spring urging by pressing on the button/lever to disengage
10 the pin from the hole and permit length adjustment of the pole.

11 38. Thus, although an untrained observer might consider the technology in
12 Plaintiff’s pole patents to be rather simple (after all, the patents deal with
13 telescoping swimming pool poles), Plaintiff’s patented features are in fact such
14 dramatic advances that Defendant Jim Conrad gasped when he saw them (as
15 mentioned above), and Defendants and three other companies have copied
16 Plaintiff’s now-patented inventions. The tremendous advantages in Plaintiff’s
17 inventions are at least part of why Defendants copied and have been unwilling to
18 stop infringing.

19 **DEFENDANTS HAVE ADMITTED SEVERAL POINTS, INCLUDING**
20 **THAT THEY INFRINGE PLAINTIFF’S ‘852 INVENTIONS**

21 39. Resh realleges and incorporates by reference the allegations set forth in
22 paragraphs 1-38.

23 40. This section of facts may be unique in patent disputes and patent
24 lawsuits. Defendants already have (presumably inadvertently) made a number of
25 admissions, all of which are against their own interests in this lawsuit. These
26 admissions include at least the ones set forth below.

Defendants Have Admitted That They Infringe Plaintiff's '852 Patent

41. By Defendants' own filings in the U.S. Patent Office, Defendants have effectively admitted that they infringe Plaintiff's '852 Patent.

42. As mentioned above and as alleged in greater detail below, Plaintiff sued Defendants in 2018 and forced Defendants to change Defendants' then-existing pole design that infringed Plaintiff's '458 Patent (another of Plaintiff's three pole patents, that the U.S. Patent Office had issued to Plaintiff in late 2017). More than 18 months later (long after Plaintiff's 2018 lawsuit had been resolved), Plaintiff discovered that the lawsuit not only had forced Defendants to stop infringing Plaintiff's '458 Patent (by revising Defendants' pole design), but Plaintiff's 2018 lawsuit also had prompted Defendants to secretly⁵ file their own pole patent application, directed to Defendants' slightly revised copycat pole. On information and belief, Defendants mistakenly hoped that, if they succeeded in obtaining their own patent, they might use it as a "shield" against any further patents that Plaintiff might eventually obtain (such as Plaintiff's '852 Patent in this lawsuit). As the Court is aware, Defendants' "hope" in that regard is incorrect as a matter of law – the existence of any patent Defendants obtain from a later filing does not prevent that "later-patented" product from infringing Plaintiff's earlier-filed patent.

43. Regardless of why Defendants filed that 2018 patent application in response to Plaintiff's lawsuit, Defendants' patent application constitutes an admission that Defendants' products infringe Plaintiff's '852 Patent.

44. For some reason, when Defendants filed their 2018 patent application, they copied Plaintiff's now-issued Claim 21 as a "Claim 1" in Defendants' application. They also swore under penalty of perjury that Defendants' copy (of

⁵ Defendants filed their secret patent application just weeks after Plaintiff served the 2018 lawsuit on Defendants. Defendants made their filing secretly (that is, without advising Plaintiff), and Plaintiff only became aware of Defendants' application more than a year later.

Plaintiff's Claim 21) describes Defendants' infringing pole products!

45. In this Complaint, Plaintiff includes several illustrations to make clear that Defendants copied Plaintiff's Claim 21. For example, below is a **table highlighting the ONLY words that Defendants did NOT copy when they filed under oath their own "Claim 1," defining Defendants' allegedly "new" pole products:**

<u>Plaintiff RESH's '852 Patent Claim 21</u> (highlighting the ONLY words Defendants did NOT Copy to Define Defendants' OWN Pole Products)	
1. An improved telepole device, comprising:	
an outer tube element having first and second ends,	
said first end of the outer tube element having a collar element associated therewith, said collar element containing a detent means ;	
an inner tube element having first and second ends, said second end of the outer tube having attachment means for removably attaching a tool;	
said second end of said inner tube element being received in the first end of the outer tube through an opening in said collar element ;	
wherein said inner tube element is configured to readily slide within said outer tube element to a selected position along the length of the outer tube, and wherein said detent means is configured to temporarily lock the inner tube in that selected position within the outer tube.	

46. Said another way, there are only 131 total words in Plaintiff's issued Claim 21 (shown above). Defendants copied 100 of those words **virtually verbatim**! The table below helps to further confirm Defendants' copying and resulting admission – that Defendants' 2018 "revised" poles infringe Plaintiff's '852 Patent Claim 21. In the left column below is (again) Plaintiff's issued '852 Patent Claim 21. In the right column is Defendants' copied version of that claim. Corresponding language between the two columns is shown in colored

highlighting⁶ – again, totaling 100 words copied (of 131 total words):

Plaintiff RESH's '852 Patent Claim 21	Defendants' Claim 1 <i>(Filed by Defendants in 2018)</i> ⁷
1. An improved telepole device, comprising:	1. An apparatus for cleaning swimming pools, cement finishing tools, ceiling wire applications, and the like, comprising:
an outer tube element having first and second ends,	an outer tube having a first end and a second end,
said first end of the outer tube element having a collar element associated therewith, said collar element containing a detent means;	said first end of the outer tube having a collar housing and angled detent,
an inner tube element having first and second ends, said second end of the outer tube having attachment means for removably attaching a tool;	said second end of said outer tube having means for attaching a tool; a dodecagon shaped inner tube having a first end and a second end,

⁶ Defendants' copying was so verbatim that just one passage that Defendants copied is even slightly "out of order" with the rest of Defendants' copying. In this table, Plaintiff shows that copied (but out of sequence) passage in blue highlighting.

⁷ As discussed elsewhere herein, the Patent Office eventually rejected this claim and all of Defendants' claims, based on a 2018 publication of Plaintiff's inventions. The Patent Office's rejection is yet further confirmation of Defendants' copying and/or infringement of Plaintiff's '852 Patent rights.

Plaintiff RESH's '852 Patent Claim 21	Defendants' Claim 1 (Filed by Defendants in 2018) ⁷
<p>said second end of said inner tube element being received in the first end of the outer tube through an opening in said collar element;</p> <p>wherein said inner tube element is configured to readily slide within said outer tube element to a selected position along the length of the outer tube, and wherein said detent means is configured to temporarily lock the inner tube in that selected position within the outer tube.</p>	<p>and includes a detachable grooved grip for grasping and positioning the apparatus; said second end of said inner tube is adapted and configured to be received within said outer tube within an aperture in said collar housing; the inner tube is shaped to slide within said outer tube to a selected position in relation to said outer tube, allowing for said angled detent to position and secure the inner tube within the outer tube; and a plurality of apertures aligned on the inner tube, so that the angled detent, which includes a locking means, may be operably engaged with one of said apertures, to secure and position the inner tube at a selected position within said outer tube.</p>

47. In case it is helpful, below are the 31 “filler” (non-substantive words) that Defendants did not copy, in a layout similar to the first table above:

Plaintiff RESH's '852 Patent Claim 21 (showing ONLY the words Defendants did NOT Copy)
1. improved telepole:
<i>element,</i>
<i>element element associated therewith, said collar element containing a means;</i>
<i>an element;</i>
<i>said element being the first end of element;</i>
<i>wherein and wherein said means is configured to.</i>

48. **None** of those words in the table above (that Defendants “omitted” in Defendants’ copying of Plaintiff’s Claim 21) are “elements” of the claim. Instead, those words are transitional/non-substantive claim language. In other words, of the

1 substantive elements in Plaintiff's '852 Patent Claim 21, Defendants have
2 admitted that their products include every element. Defendants therefore have
3 admitted that their products infringe at least Plaintiff's '852 Patent Claim 21.

4 49. Based on the virtual identity of Defendants' copying shown above,
5 Plaintiff alleges that Defendants copied Plaintiff's claim (with the slight
6 differences shown above) and included that copied claim in Defendants' 2018
7 patent application.

8 50. On information and belief, and as further discussed below, Defendants
9 were able to copy that language because, at the time Defendants filed their 2018
10 patent application, Defendants had access to Plaintiff's eventual Claim 21
11 language. Defendants (themselves or via any patent attorney or patent agent who
12 assisted Defendants' patent filing) had a copy of the Patent Office's 2013
13 publication and/or the Patent Office's January 2018 publication of Plaintiff's
14 patent application.

15 51. Defendants' 2018 patent application (including the claim in the right-
16 hand column above) accurately described at least some of Defendants' pole
17 products at that time that Defendants filed it.

18 52. Defendants' 2018 patent application (including the claim in the right-
19 hand column above) continues to accurately describe at least some of Defendants'
20 pole products that Defendants continue to make and sell today, including ones that
21 Plaintiff is accusing herein of infringing Plaintiff's '852 Patent (including without
22 limitation Defendants' two-piece SnapLite⁸ poles described herein, and any
23 corresponding private-labeled poles).

24 53. Defendants filed their 2018 patent application (including the claim in the
25 right-hand column above) with a declaration under penalty of perjury. To make

26
27 ⁸ Defendants' have named their infringing copies of Plaintiff's '852 Patent
28 pole inventions Defendants "SnapLite" poles.

1 the record even more complete in that regard (and to reduce the need to litigate it
2 in this lawsuit), below are true and correct copies of U.S. Patent Office records,
3 including (a) portions of Defendant James Conrad's sworn Declaration (dated
4 March 7, 2018), as Defendants filed it with the Patent Office, and (b) Defendants'
5 Claim 1 as it appeared on pages 23-24 of Defendants' application (the same Claim
6 1 shown in the right-hand column of the above table). In signing this Declaration,
7 Defendant James Conrad confirmed under 18 USC 1001 (penalty of perjury) that
8 his application includes the "invention" defined in the right-hand column of the
9 table above:

Attorney's Docket No. CONRAD-1X

PATENT

COMBINED DECLARATION AND POWER OF ATTORNEY*(ORIGINAL, DESIGN, NATIONAL STAGE OF PCT, SUPPLEMENTAL, DIVISIONAL, CONTINUATION OR C-I-P)*

As a below named inventor, I hereby declare that:

TYPE OF DECLARATION

This declaration is of the following type: (check one applicable item below)

☒ original☐ design☐ supplemental*NOTE: If the declaration is for an International Application being filed as a divisional, continuation or continuation-in-part application, do not check next item; check appropriate one of last three items.*☐ national stage of PCT*NOTE: If one of the following 3 items apply, then complete and also attach ADDED PAGES FOR DIVISIONAL, CONTINUATION OR C-I-P.*☐ divisional☐ continuation☐ continuation-in-part (C-I-P)**INVENTORSHIP IDENTIFICATION**

My residence, post office address and citizenship are as stated below next to my name. I believe I am the original, first and sole inventor (if only one name is listed below) or an original, first and joint inventor (if plural names are listed below) of the subject matter which is claimed and for which a patent is sought on the invention entitled:

TITLE OF INVENTION**TELESCOPIC POLE FOR SWIMMING POOL TOOLS**

DECLARATION

As below named inventor: I hereby declare that:

The above-identified application was made or authorized to be made by me.

I believe that I am the original inventor or an original joint inventor of a claimed invention in the application.

I hereby acknowledge that any willful false statement made in this declaration is punishable under 18 U.S.C. 1001 by fine or imprisonment of not more than five (5) years, or both.

I further hereby declare that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true; and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code, and that such willful false statements may jeopardize the validity of the application or any patent issued thereon.

(Declaration and Power of Attorney [1-1]—page 4 of 6)

SIGNATURE(S)

NOTE: Carefully indicate the family (or last) name as it should appear on the filing receipt and all other documents.

Full name of sole or first inventor

James R. Conrad
(GIVEN NAME) (MIDDLE INITIAL OR NAME) FAMILY (OR LAST NAME)

Inventor's signature 

Date 3-7-18 Country of Citizenship U.S.

Residence 1518 Moffett Street #E, Salinas, CA. 93905

Post Office Address Same As Above

-23-

Claims**What is claimed is:**

5

1. An apparatus for cleaning swimming pools, cement finishing tools, ceiling wire applications, and the like, comprising:

10

an outer tube having a first end and a second end, said first end of the outer tube having a collar housing and angled detent, said second end of said outer tube having means for attaching a tool;

15

a dodecagon shaped inner tube having a first end and a second end, and includes a detachable grooved grip for grasping and positioning the apparatus; said second end of said inner tube is adapted and configured to be received within said outer tube within an aperture in said collar housing; the inner tube is shaped to slide within said outer tube to a selected position in relation to said outer tube, allowing for said angled detent to position and secure the inner tube within the outer tube; and

25

-24-

a plurality of apertures aligned on the inner tube, so that the angled detent, which includes a locking means, may be operably engaged with one of said apertures, to secure and position the inner tube at a selected position within said outer tube.

5

54. In summary, based on the virtual 100% copying of Plaintiff's Claim 21 above, it is beyond dispute that Defendants had a copy of Plaintiff's pending

1 application by on or around March 7, 2018, when they filed Defendants' own
2 patent application. Possibly more importantly, however, and again based on
3 Defendants' own sworn filings in the U.S. Patent Office, Defendants have
4 effectively **admitted** that they infringe Plaintiff's '852 Patent. Plaintiff therefore
5 hopes and expects that this lawsuit therefore will not require litigation of that issue,
6 and looks forward to Defendants at least admitting that point.

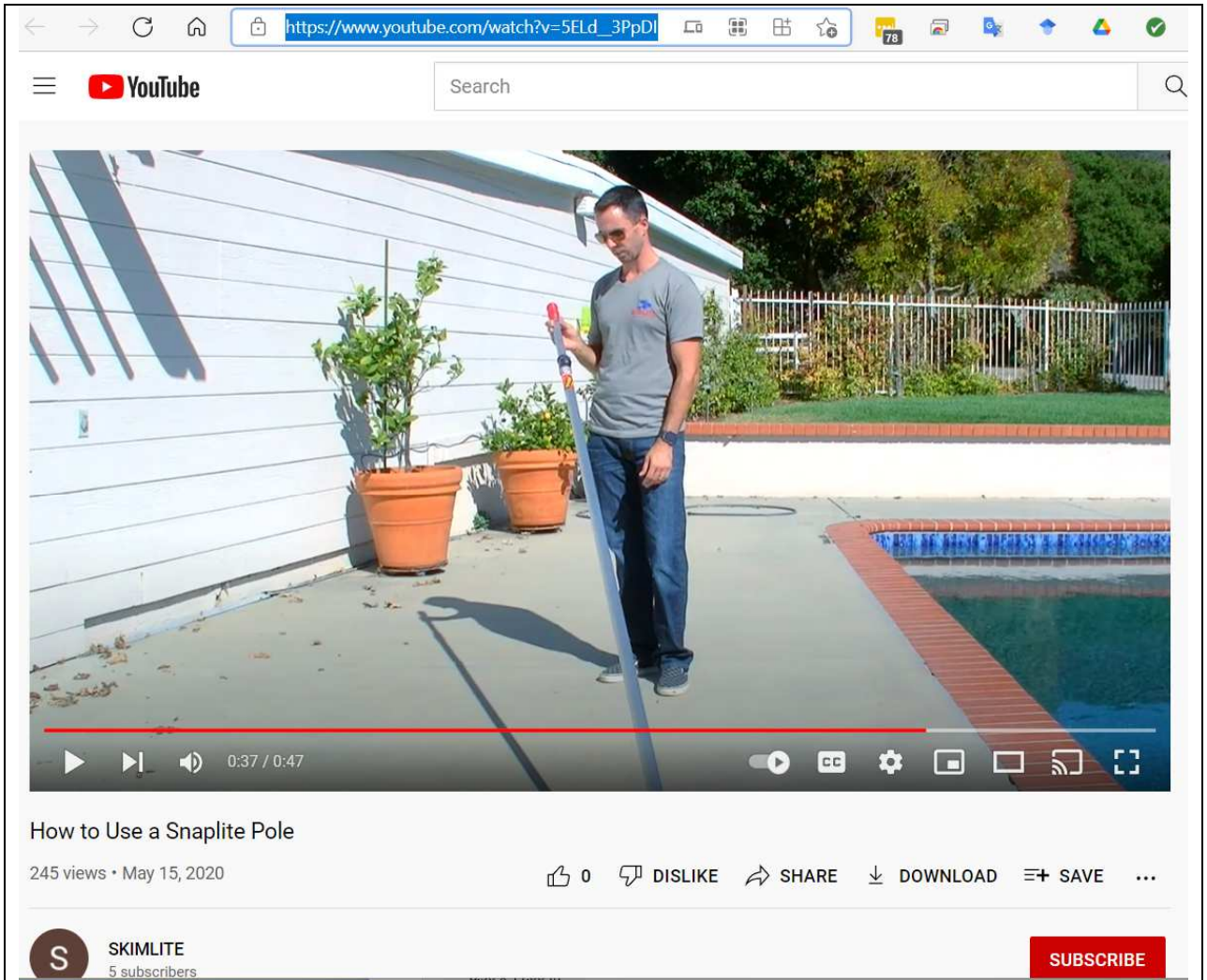
7 55. As further discussed below, although **Defendants copied directly** from
8 Plaintiff's 2013 published claim, Defendants violated their duty to the Patent
9 Office regarding that copying, by not advising the Patent Office Examiner of the
10 existence Plaintiff's 2013 published claim. As the Court may realize, all patent
11 applicants have a duty to disclose to the Patent Office (and to the specific
12 Examiner assigned to handle their patent application) information that may be
13 material to whether the applicants' claims are patentable. A claim from which
14 Defendants copied 100 of 131 words verbatim certainly meets that definition (of
15 being "material"), and Defendants chose to not disclose their copying of Plaintiff's
16 claim (or the source from which Defendants copied).

17 56. Among other things, Defendants have unclean hands, and this Court
18 should enter appropriate orders to Defendants' prejudice, based on those unclean
19 hands.

20 **Defendants Have Admitted That Their Infringing Products Are Quickly**
21 **Becoming "MANY PEOPLE'S FAVORITE" Pole**

22 57. In addition to admitting that they are infringing Plaintiff's '852 Patent,
23 Defendants have admitted that their infringing products are **quickly becoming the**
24 **favorite** poles of many of Defendants' customers. On or about May 2020, just two
25 years after Plaintiff forced Defendants to revise Defendants' infringing poles,
26 Defendants posted a YouTube video about those revised poles. In that video,
27 Defendant Barrett Conrad admits that Defendants' infringing SnapLite poles are
28

“quickly becoming many people’s favorite.” Below is a screenshot from Defendants’ video admission (from https://www.youtube.com/watch?v=5ELd__3PpDI, at the 0:35 mark):



58. On a related point, a YouTube post at (<https://www.youtube.com/watch?v=u5hTKelagiE>) says (beginning at the 3:10 mark) that the user (a pool man) “find[s] the [infringing Snaplite] buttons easier to use on the SnapLite pole versus twisting and unlocking the [Skimlite prior art Dually pole] sections.”

DEFENDANTS' PRODUCTS INFRINGE PLAINTIFF'S '852 INVENTIONS

59. As discussed herein, Defendants' poles infringe Plaintiff's '852 patent claims. In addition to other discussion herein, this infringement is illustrated generally in a table attached hereto as Exhibit C. That table illustrates the infringement of both Defendants' two-tube and three-tube poles. That table is preliminary and is not intended to be a comprehensive and/or final litigation claims chart, but instead is only a broad and exemplary overview of Defendants' infringement. Among other things, and by way of example, that table preliminarily analyzes the independent claims of Plaintiff's '852 Patent (Claims 1, 2, 20, and 21), but does not include any analysis of Plaintiff's dependent claims that Defendants may be infringing. A further example is that Plaintiff has not yet been able to comprehensively confirm the scope of Defendants' product line, private-labeling, or other potentially infringing products, and the table only illustrates infringement of two models of Defendants' infringing poles.

60. Defendants make, use, sell, offer for sell, and/or import into the U.S. products that infringe Plaintiff's '852 patent. These products include, but are not necessarily limited to, Defendants' "SnapLite" poles discussed and shown herein.

DEFENDANTS COPIED PLAINTIFF'S '852 INVENTIONS

61. Resh realleges and incorporates by reference the allegations set forth in paragraphs 1-59.

62. In addition to Defendants' own admissions (discussed above) and the preliminary claim charts of Exhibit C, there is substantial other evidence that Defendants copied and are infringing Plaintiff's '852 Patent rights. Separate from issues of infringement, the Defendants' copying of Plaintiff's '852 Patent inventions is clear from a variety of evidence, including the examples discussed herein.

63. A chronology of Defendants' swimming pool pole products is part of that further evidence. That chronology starts many decades ago, before Plaintiff's inventor Eric Resh was even born. Defendants promote Skimlite as having created the very first telescoping swimming pool pole, in approximately 1954. Since that time, and without interruption, Defendants have been making telescoping swimming pool poles. In other words, Defendants have been making telescoping swimming pool poles for nearly 70 years. They have had all of those decades to create and refine their pole products. On information and belief, during those many decades before they saw Plaintiff's '852 Patent inventions, Defendants revised and added to their line of pole products.

64. Plaintiff Resh first showed Plaintiff's '852 Patent inventions publicly at an industry trade show in 2012. At that time, Defendants had been making telescoping pool poles for almost 60 years.

65. On information and belief, during all of those decades of making telescoping pool poles (prior to 2012), Defendants had never previously made or sold any "button/lever/detent" style telescoping swimming pool pole. Instead, all of the telescoping swimming pool poles Defendants had made and/or sold used twisting or clamping to lock the pole at a selected length.

66. At that 2012 trade show, both Plaintiff and Defendants had booths to display and promote their respective products. By coincidence (and as discussed in further detail in Exhibit B), near the start of that trade show Defendant Jim Conrad walked up to Plaintiff's booth and picked up Plaintiff's prototype pole. Mr. Conrad was so startled by Plaintiff's pole that Mr. Conrad immediately gasped.

67. After seeing Plaintiff's new pool pole inventions in 2012, Defendants began copying Plaintiff's swimming pool pole inventions.

68. Defendants did not begin making and selling their SnapLite telescoping poles until after seeing Plaintiff's '852 button/detent/lever lock pole inventions.

69. It may also be helpful to illustrate Defendants' copying and infringement by including a more direct visual contrast of (a) Defendants' old-style telescoping swimming pools poles (that use the **twisting or clamping** approaches mentioned above), with (b) Defendants' copies of Plaintiff's '852 Patent pole inventions. Defendants' own website includes photographs of both of those types of Defendants' poles. Below is the same part of Defendants' website (at <https://skimlite.com/>) as shown above. As with the copy above, this copy includes some very slight editing, to enhance and clarify the comparison and contrast between (a) the top group of five photographs that show Defendants' poles using Defendants' **decades-old** twisting/clamping length adjustments, and (b) the sixth photograph (enlarged below the other five), that shows some of Defendants' infringing copies of Plaintiff's '852 Patent pole inventions (which, again, Defendants have named their "SnapLite" poles):



Defendants' New Infringing "SnapLite" Poles



70. The above screenshots from Defendants' website have been edited as follows:

- the upper image shows some of Defendants' prior art twisting/clamping pole models, but also has a white square added in the upper right quadrant of the screenshot (the material that normally appears in that square has been cut and pasted and slightly enlarged, as the lower image);⁹ and
- the lower image is that cut/pasted white block area (from the upper image). In the lower image, Defendants' infringing push button/lever features are highlighted with yellow arrows.¹⁰

71. As noted above, the upper image above shows some of Defendants'

⁹ For extra clarity, Plaintiff notes that Defendants' actual website does **not** include the "white square" in the upper right quadrant. Cutting and pasting that "white square block" is intended to permit a focused review and discussion of only Defendants' **prior art style** pool poles, and an even more vivid comparison against Defendants' copying of Plaintiff's pole inventions.

¹⁰ The yellow arrows in the lower image were added for ease of review, and are not in Defendants' actual website display.

1 many twisting/clamping prior art style swimming pool poles. None of
2 Defendants' swimming pool poles shown in that upper image have a
3 detent/button/lever lock length adjustment. Instead, in ALL of those poles
4 Defendants use twisting and/or clamping or other similar decades-old technology,
5 to keep the swimming pool pole set at a selected length. Until Defendants saw
6 Plaintiff's '852 Patent pole inventions (around 2012), during all those decades of
7 making telescoping swimming pool poles, the only telescoping swimming pool
8 poles that Defendants made and sold used that prior art twisting or clamping
9 technology.

10 72. Defendants' copying of Plaintiff's '852 Patent push button/lever lock
11 inventions is easy to see visually, simply by reviewing that lower image with the
12 yellow arrows. The yellow arrows in that cut/pasted square point to the infringing
13 push-button lever lock technology (that Defendants copied from Plaintiff's '852
14 Patent inventions). Instead of continuing to use Defendants' old prior art twisting
15 or clamping style (shown in the five upper screenshot images), Defendants copied
16 Plaintiff's inventions (as shown by the yellow arrows in the lower image).

73. As mentioned above, the lower image shows some of Defendants' infringing "SnapLite" series of poles (specifically the "6317" and "6016" models of Defendants' SnapLite poles). Upon information and belief, Defendants' infringing models include more than just those two models shown in the screenshot above. Upon information and belief, Defendants' infringing products include at least Defendants' lighter-weight "homeowner" models 1012 and 1016, and Defendants' "professional" models 6012, 6016, 6317, and 6323, as well as infringing poles Defendants are private-labeling for third parties (such as First Choice poles discussed herein). Below are screenshots of the gripping ends of some of Defendants' other models:





Infringing Model 6012

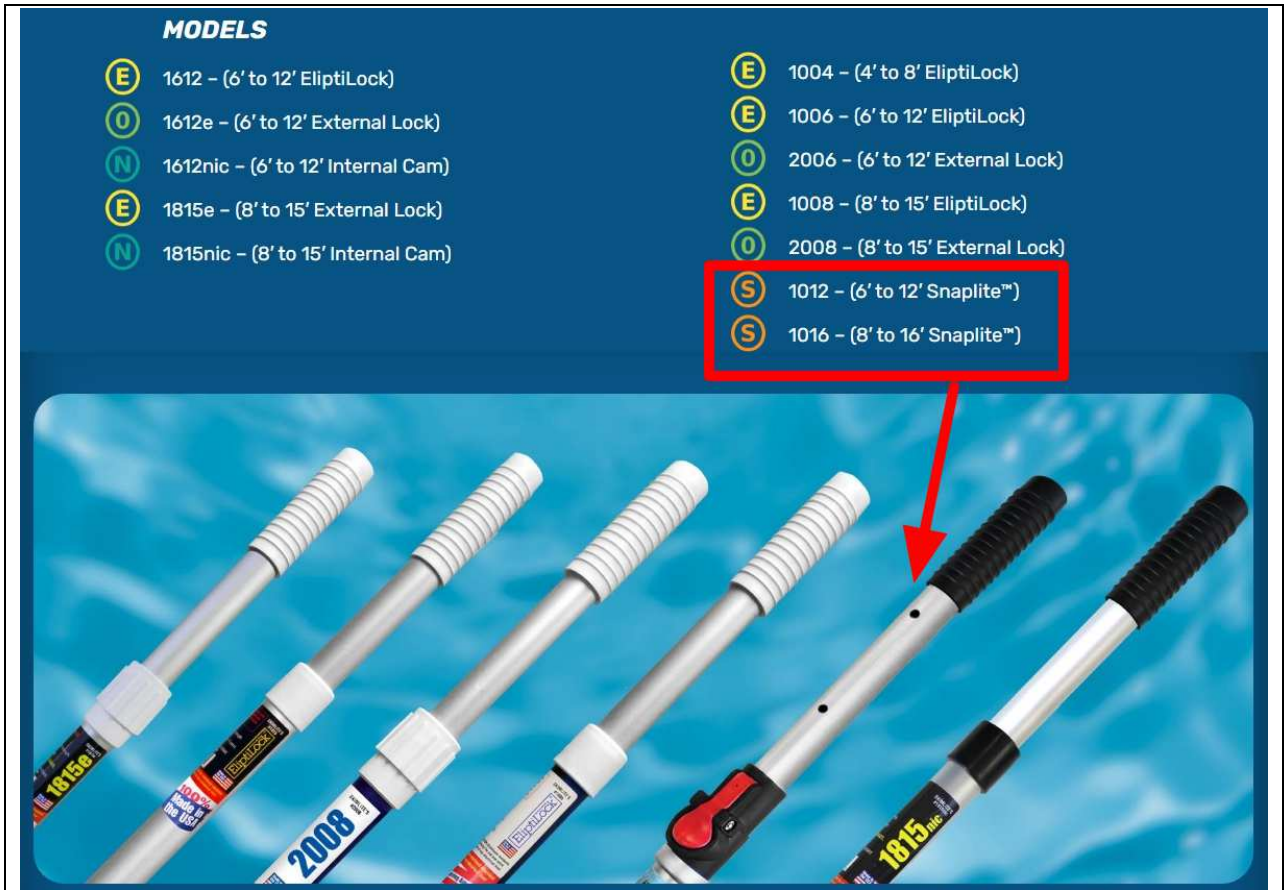


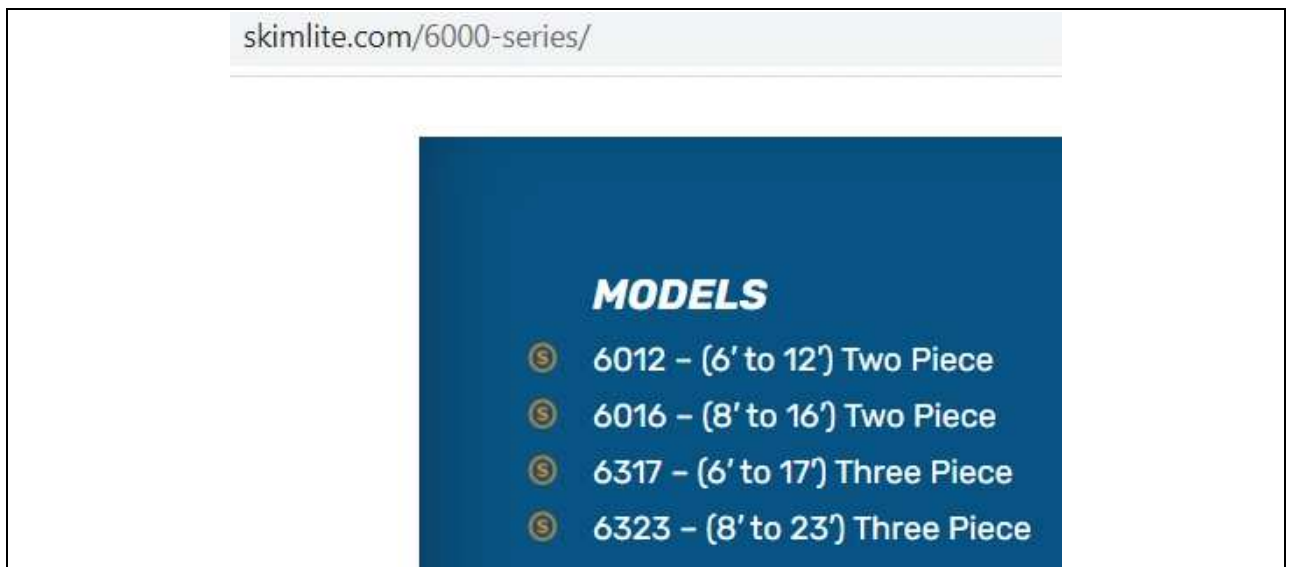
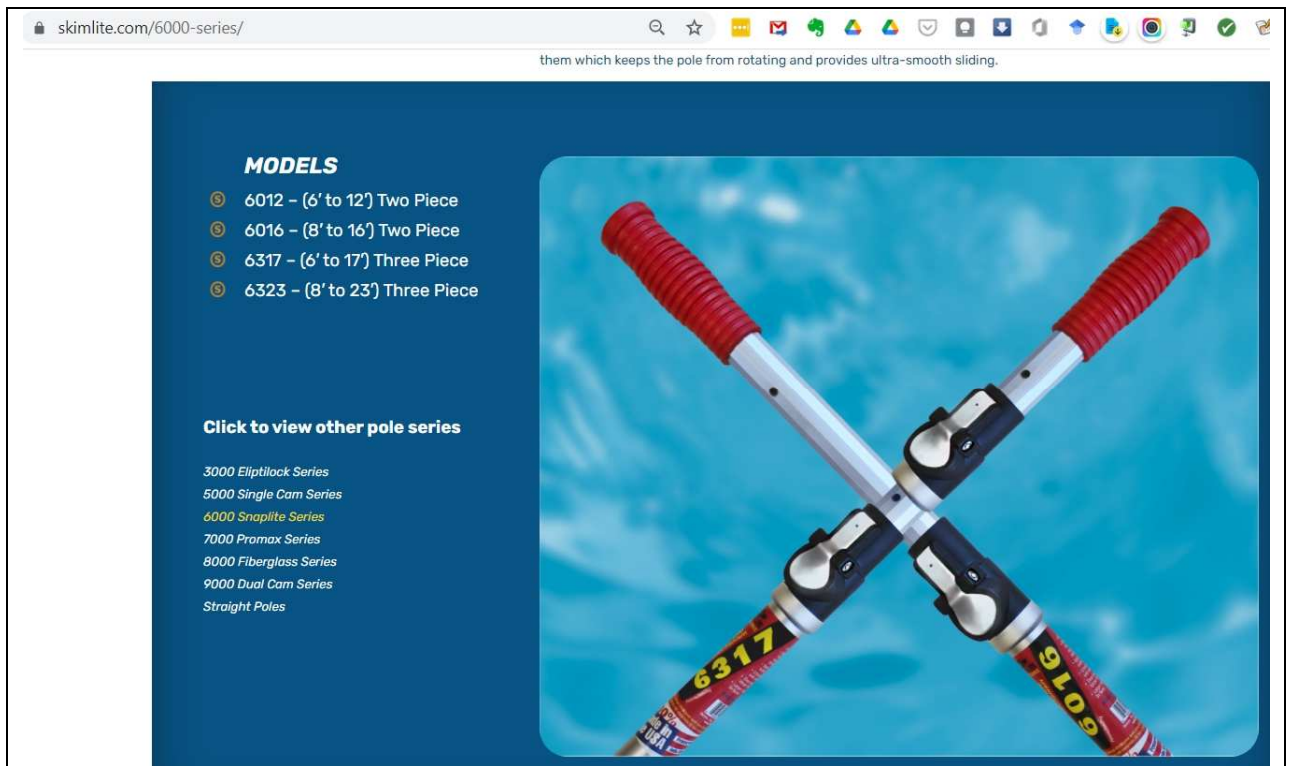
Infringing Model 6016



Infringing Model 6317

74. Below are further screenshots of Defendants' infringing products, taken from Defendants' website (www.skimlite.com). In the first screenshot, some highlighting is added to distinguish Defendants' infringing products (Models 1012 and 1016) from other telescoping pool poles (the rest of the poles in the screenshot) that Defendants sell:





23 75. In addition, on information and belief and as mentioned above,

24 Defendants have begun private-label manufacturing of infringing poles for third

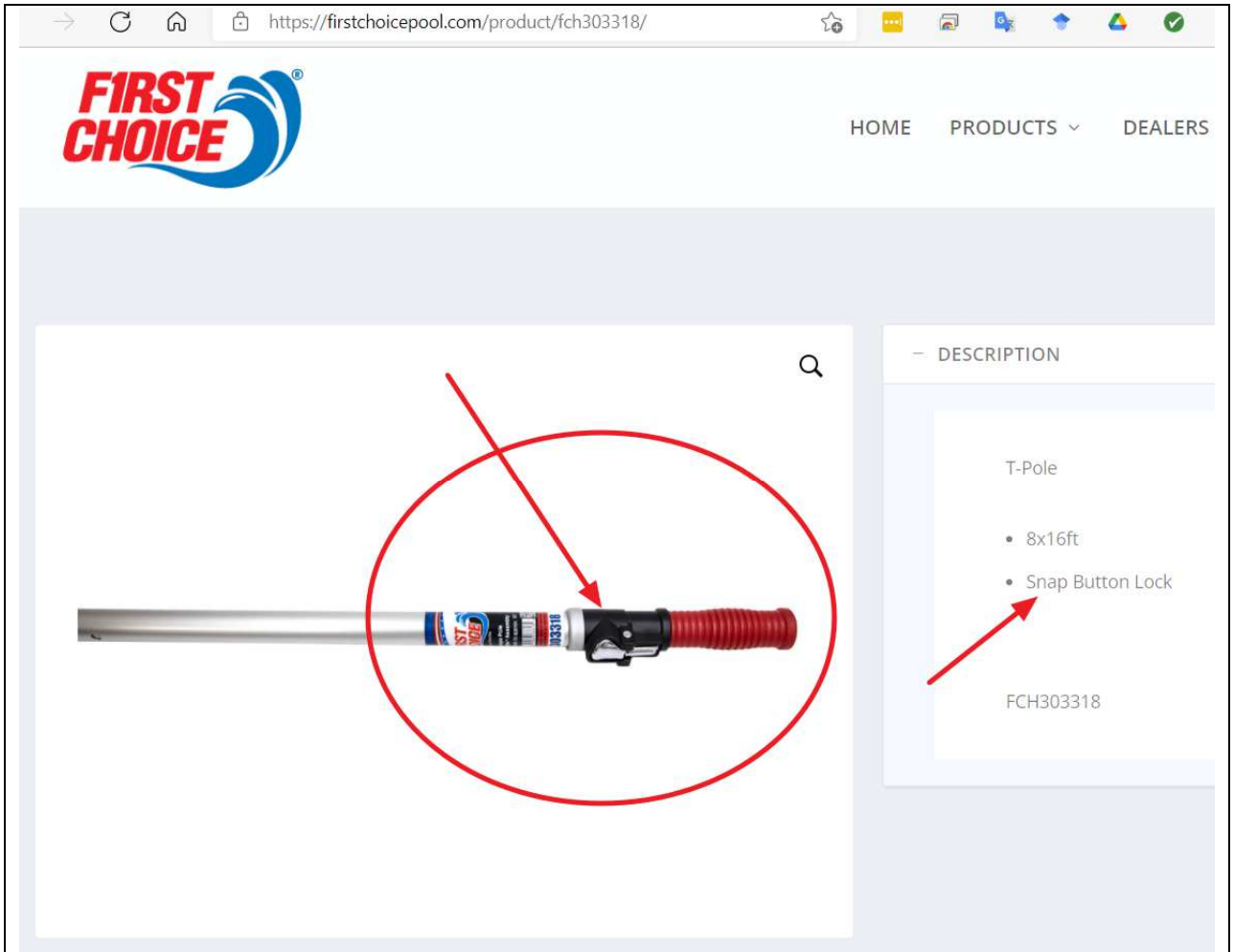
25 parties. Those include, for example, a “First Choice” brand of poles, which

26 Defendants have private-labeled and which are sold by a major industry distributor

27 named PEP. Below is a true and correct screenshot, with red highlighting added,

28

of the infringing First Choice brand poles with push-button/lever lock features (from <https://firstchoicepool.com/product/fch303318/>):



76. Upon information and belief, Defendants' infringing SkimLite (and/or private-labeled) poles generally can be divided into two categories: (1) poles fabricated from two telescoping tubes; and (2) poles fabricated from three

1 telescoping tubes. Both versions incorporate and infringe the ‘852 Patent’s
2 inventions. Of the models listed above, Models 6317 and 6323 have three tubes
3 (on information and belief, the Defendants’ use the underlined “3” in their model
4 numbers 6317 and 6323 to indicate that the model uses 3 tubes). On information
5 and belief, Defendants’ other SnapLite models use two tubes.

6 77. As mentioned above, Defendants’ call their new infringing poles
7 “SnapLite” poles. That name choice by Defendants is further evidence confirming
8 Defendants’ copying of Plaintiff’s ‘852 Patent push button/lever lock inventions.
9 On information and belief, Defendants chose that name because those infringing
10 poles use Plaintiff’s patented inventions to provide a “snap” engagement for
11 adjusting the poles’ length (in contrast to continuing to use Defendants’ decades-
12 old twisting/clamping engagement to set the length of the pole). Defendants’
13 choice of “SnapLite” apparently is intended to evoke in customers’ minds that
14 Plaintiff’s push-button technology is a “snap” to use, or that the push-button
15 technology “snaps” into engagement at a desired pole length. In either case, it
16 confirms that Defendants adopted Plaintiff’s inventions.

17 78. Other evidence shows that Defendants copied Plaintiff’s ‘852 Patent
18 inventions. As mentioned above, approximately 10 years ago, in 2012, Plaintiff
19 Resh first showed the ‘852 Patent inventions publicly, by bringing Plaintiff’s first
20 prototype to an industry trade show at which both Plaintiff and Defendants had
21 booths. By coincidence, one of the first people to see Plaintiff’s “first public
22 disclosure” of those pole inventions was Defendant James Conrad. After
23 Defendants saw Plaintiff’s ‘852 swimming pool pole inventions, Defendants
24 (along with several other competitors) copied those inventions and began selling
25 products that now are covered by Plaintiff’s ‘852 Patent. This copying (by
26
27
28

Defendants and others) is discussed in further detail in Exhibit D.¹¹

79. As discussed herein, Defendants' copying went even further than those other competitors. Unlike those other infringers, **Defendants** copied not just Plaintiff's push-button/lever lock feature, but also Plaintiff's water channel feature (for which the Patent Office awarded Plaintiff's first patent, in late 2017)¹² and Plaintiff's multiple attachment holes feature (for which the Patent Office awarded Plaintiff's second patent, in August 2021). Again, unlike those other copying infringers, Defendants apparently had no qualms about copying every aspect and feature of Plaintiff's pole inventions. As mentioned elsewhere, in early 2018 (when Plaintiff became aware of Defendants' infringement of that 2017 patented feature and Defendants refused to stop infringing), Plaintiff sued and forced Defendants to stop infringing, and in late 2021, forced Defendants to stop infringing Plaintiff's second patent.

80. Some of the additional extensive evidence of Defendants' copying of Plaintiff's pole inventions is discussed here, as well as in further sections below, and much of this evidence is relevant to multiple issues in this lawsuit (including, for example, Defendants' willfulness and Defendants' liability for pre-issuance damages and other relief sought by Plaintiff). As noted above, some of that additional evidence of copying is provided by Defendants' own filings in the U.S. Patent Office itself.

81. As mentioned above, and more than one and a half years after Plaintiff's

¹¹ As mentioned in Exhibit C, the other copiers of which Plaintiff is currently aware are companies named Oreq, ProTuff, and AquaEZ. Exhibit C is a true and correct copy of additional portions of Plaintiff's filings in the U.S. Patent Office that eventually led the Office to grant the '852 patent. Pages 9, 10, 137, 138, and 139 are true and correct descriptions of Defendants' and third party copying of Plaintiff's '852 Patent inventions.

¹² The other infringers did not copy that feature, perhaps in acknowledgement that at least THAT feature was likely to be awarded patent protection by the Patent Office.

1 2018 lawsuit, Plaintiff discovered that Plaintiff's 2018 lawsuit had not only
 2 prompted Defendants to stop infringing Plaintiff's '458 Patent (by removing the
 3 infringing water channel), but also to secretly¹³ file a patent application directed to
 4 Defendants' "new" version of copycat pole (a version without any infringing water
 5 channel).¹⁴ As mentioned above, the Patent Office eventually rejected all of
 6 Defendants' claims based on Plaintiff's inventions. The Patent Office's rejection
 7 of Defendants' claims is important to the issues in the present lawsuit for several
 8 reasons. Among other things, the Patent Office's rejection is a further "objective
 9 third party" indication that Defendants' patent application (directed to Defendants'
 10 "revised" products) shows that even Defendants' "revisions" in 2018 continued
 11 copying Plaintiff's inventions.

12 82. More specifically, in July 2019 the U.S. Patent Office rejected
 13 Defendants' 2018 patent application, because Defendants' device was so similar to
 14 Plaintiff's earlier '852 Patent inventions. In that regard, below is a true and correct
 15 copy of relevant portions of the Patent Office's February 2020 Notice of
 16 Abandonment communication to Defendants, rejecting Defendants' patent
 17 application based on the similarity to (or copying of) Plaintiff's earlier-filed patent
 18 applications/inventions:¹⁵

21
 22 ¹³ Defendants filed their secret patent application just weeks after Plaintiff
 23 served the 2018 lawsuit on Defendants. Defendants made their filing secretly (that
 24 is, without advising Plaintiff), and Plaintiff only became aware of Defendants'
 application more than a year and a half later, after the Patent Office published
 Defendants' application in September 2019 (see below).

25 ¹⁴ As reflected in the various correspondence and Patent Office documents
 26 included herein, Defendants used a different attorney to file their patent application
 27 than they used to represent them in the 2018 lawsuit. Among other things, that
 28 may be a factor in why Defendants copied Plaintiff's Claim 21 into Defendants'
 2018 patent application.

¹⁵ See also page 139 of Exhibit C.



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
 United States Patent and Trademark Office
 Address: COMMISSIONER FOR PATENTS
 P.O. Box 1450
 Alexandria, Virginia 22313-1450
 www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
15/932,534	03/12/2018	James R. Conrad	CONRAD-IX	2743
38030 7590 07/30/2019 JEFFREY HALL 212 CLINTON ST SANTA CRUZ, CA 95062			EXAMINER SULLIVAN, MATTHEW J	
			ART UNIT	PAPER NUMBER
			3677	
			MAIL DATE	DELIVERY MODE
			07/30/2019	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No.	Applicant(s)	
	15/932,534	Conrad, James R.	
	Examiner	Art Unit	AIA (FITF) Status
	MATTHEW J SULLIVAN	3677	Yes

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTHS FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).

Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1) ☒ Responsive to communication(s) filed on 3/12/18.

☐ A declaration(s)/affidavit(s) under **37 CFR 1.130(b)** was/were filed on ____.

2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.

3) ☐ An election was made by the applicant in response to a restriction requirement set forth during the interview on ____; the restriction requirement and election have been incorporated into this action.

4) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims*

5) ☒ Claim(s) 1-19 is/are pending in the application.

5a) Of the above claim(s) ____ is/are withdrawn from consideration.

6) ☐ Claim(s) ____ is/are allowed.

7) ☒ Claim(s) 1-19 is/are rejected.

83. On page 6 of that Patent Office communication (copied below), the Patent Office states that Plaintiff's 2018 patent publication includes all of the

elements for almost all of the claims on which Defendants are attempting to get patent protection, except for a dodecagon inner tube shape:

Application/Control Number: 15/932,534
Art Unit: 3677

Page 6

Claims 1, 4-7, 9, 12-16 and 18-19 (properly 19-20) is/are rejected under 35 U.S.C. 103 as being unpatentable over Resh, U.S. Patent Application 2018/0009099 in view of Holden, U.S. Patent 6,805,271.

Resh teaches an apparatus comprising an outer tube (2) having first and second ends, the first end having a collar housing (3) and an angled detent (4), the second end of the outer tube having means for attaching a tool (see Abstract, paragraph [0027]), an inner tube (5) having first and second ends and including a detachable grooved grip (element 8, paragraph [0085] and received within an aperture in the collar (see fig. 2a), a plurality of apertures (2a) aligned on the inner tube and the angled detent includes a locking means (fig. 2c, element 6).

Resh does not teach the inner tube being a dodecagon.

Holden teaches a tube within a tube structure where a dodecagon is employed because it allows rotation, but also permits a level of rotation resistance (Col 10, Ln 57 – Col 11, Ln 14).

At the time of the invention it would have been obvious to one of ordinary skill in the art barring any unforeseen result to provide Resh with an inner tube in the shape of Holden because the rotation capabilities as taught by Holden would be beneficial for properly positioning the tool, [Claim 1].

84. Given the other facts set forth herein, this is tantamount to the Patent Office saying that Defendants copied Plaintiff's invention, but revised the shape of the inner tube to a dodecagon. Below is a further portion of that Patent Office communication, by which the Patent Office reaches a similar conclusion about Defendants' other claims:

Claims 2, 10 and 17 is/are rejected under 35 U.S.C. 103 as being unpatentable over Resh-

Holden as applied to claims 1, 9 and 16 above, and further in view of Spear, U.S. Patent 4,417,744.

All the aspects of the instant invention are disclosed above but for the locking means being a tapered pin.

Spear teaches a tapered pin 62 inserted into an aperture (see figs. 2-3).

At the time of the invention it would have been obvious to one of ordinary skill in the art to provide a tapered pin on the angled detent of Resh because that would permit easier entry of the pin into the aperture.

Claims 3, 8, 11 and 17 (properly 18) is/are rejected under 35 U.S.C. 103 as being unpatentable

over Resh-Holden as applied to Claims 1, 9 and 16 above, and further in view of Lacy, U.S. Patent 5,092,262

All the aspects of the instant invention are disclosed above but for the locking mechanism including a ringed pin.

Lacy teaches two nesting tubes joined by a ringed pin in apertures (see fig. 7, element 120).

At the time of the invention it would have been obvious to one of ordinary skill in the art barring any unforeseen result to provide Resh-Holden with a ringed pin as taught by Lacy instead of the mechanism of Resh because a ringed pin would more affordable and is a readily available off-the-shelf component, [3, 11, 17 (properly 18)].

85. Consistent with the Patent Office claim rejections above, the Patent Office Examiner who reviewed Defendants' application listed Plaintiff's 2018 patent publication as the first prior art upon which the Examiner relied for rejecting Defendants' claims (as shown in this true and correct copy of the Examiner's Notice of References Cited):

Notice of References CitedApplication/Control No.
15/932,534Applicant(s)/Patent Under
Reexamination
Conrad, James R.Examiner
MATTHEW J SULLIVANArt Unit
3677

Page 1 of 3

U.S. PATENT DOCUMENTS

*		Document Number Country Code-Number-Kind Code	Date MM-YYYY	Name	CPC Classification	US Classification
*	A	US-20180009099-A1	01-2018	Resh; Eric V.	B25G3/18	1/1
*	B	US-6805271-B2	10-2004	Holden; William	A47K10/38	206/409
*	C	US-5092262-A	03-1992	Lacy; Franklin R.	B63B19/02	114/343
*	D	US-4417744-A	11-1983	Spear; Kenneth J.	B62J1/08	248/411
*	E	US-20190118393-A1	04-2019	Browne; Benjamin Alan	B25B9/00	1/1
*	F	US-20180281169-A1	10-2018	Cromartie; Brad	B25G1/04	1/1
*	G	US-20180103819-A1	04-2018	Hoyle; Mark Allen	B25G1/04	1/1
*	H	US-9999970-B2	06-2018	Browning; Don Robert	B25G1/10	1/1
*	I	US-20170282348-A1	10-2017	MARK; MOSHE	A46B5/0095	1/1
*	J	US-10091948-B2	10-2018	Pringnitz; Todd	A01G3/083	1/1
*	K	US-8939051-B1	01-2015	Lofley, Sr.; Robert G.	F16B7/1418	294/210
*	L	US-9120217-B2	09-2015	Fischer, Jr.; Gary M.	B25G1/04	1/1
*	M	US-9427854-B2	08-2016	Leighton; Lisa	B25B13/06	1/1

86. For the sake of completeness, and to hopefully expedite the remainder of this lawsuit, below is a true and correct copy of the Patent Office's Notice of Publication of Defendants' application, indicating publication on September 12, 2019:



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
 United States Patent and Trademark Office
 Address: COMMISSIONER FOR PATENTS
 P.O. Box 1450
 Alexandria, Virginia 22313-1450
 www.uspto.gov

APPLICATION NUMBER	FILING OR 371(C) DATE	FIRST NAMED APPLICANT	ATTY. DOCKET NO./TITLE
15/932,534	03/12/2018	James R. Conrad	CONRAD-1X

CONFIRMATION NO. 2743

38030
 JEFFREY HALL
 212 CLINTON ST
 SANTA CRUZ, CA 95062

PUBLICATION NOTICE



OC000000111073250

Title:Telescopic Pole For Swimming Pool Tools

Publication No.US-2019-0275659-A1
 Publication Date:09/12/2019

NOTICE OF PUBLICATION OF APPLICATION

The above-identified application will be electronically published as a patent application publication pursuant to 37 CFR 1.211, et seq. The patent application publication number and publication date are set forth above.

87. Finally, below are true and correct copies of portions of Defendants' application as published by the Patent Office, including the "Claim 1" that Defendants copied virtually verbatim from Plaintiff's 2013 published application:

(19) **United States**
 (12) **Patent Application Publication**
 Conrad

(10) **Pub. No.: US 2019/0275659 A1**
 (43) **Pub. Date: Sep. 12, 2019**

(54) **TELESCOPIC POLE FOR SWIMMING POOL TOOLS**

(52) **U.S. Cl.**
 CPC *B25G 1/04* (2013.01); *F16B 7/105* (2013.01); *E04H 4/1609* (2013.01)

(71) Applicant: **James R. Conrad**, Salinas, CA (US)

(57) **ABSTRACT**

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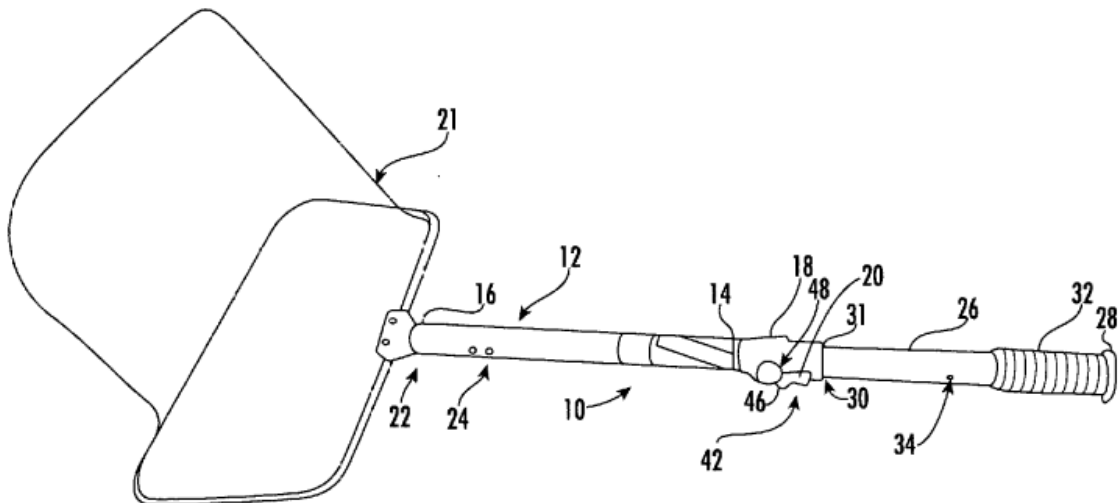
An apparatus for cleaning swimming pools, cement finishing tools, and wire ceiling applications, having an outer tube having a collar and angled detent, and a mechanism for attaching a tool. A dodecagon shaped inner tube configured to be received within the outer tube within an aperture in the collar. The inner tube is shaped to slide within the outer tube to a selected position in relation to the outer tube, allowing for the angled detent to position and secure the inner tube within the outer tube. A plurality of apertures are aligned on the inner tube, so that the angled detent, which includes a locking mechanism, which may be a tapered or ringed pin that is operably engaged with one of the apertures, to secure the inner tube at a selected position within the outer tube.

(21) Appl. No.: **15/932,534**

(22) Filed: **Mar. 12, 2018**

Publication Classification

(51) **Int. Cl.**
B25G 1/04 (2006.01)
E04H 4/16 (2006.01)
F16B 7/10 (2006.01)



Sep. 12, 2019

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shown and described. Accordingly, departures from such details may be made without departing from the spirit or scope of the applicant's general inventive concept.

What is claimed is:

1. An apparatus for cleaning swimming pools, cement finishing tools, ceiling wire applications, and the like, comprising:

an outer tube having a first end and a second end, said first end of the outer tube having a collar housing and angled detent, said second end of said outer tube having means for attaching a tool;


a dodecagon shaped inner tube having a first end and a second end, and includes a detachable grooved grip for grasping and positioning the apparatus; said second end of said inner tube is adapted and configured to be received within said outer tube within an aperture in said collar housing; the inner tube is shaped to slide within said outer tube to a selected position in relation to said outer tube, allowing for said angled detent to position and secure the inner tube within the outer tube; and

a plurality of apertures aligned on the inner tube, so that the angled detent, which includes a locking means, may be operably engaged with one of said apertures, to secure and position the inner tube at a selected position within said outer tube.

88. Rather than respond or contest the July 2019 Patent Office rejections, Defendants filed a "continuation-in-part" patent application,¹⁶ and let their initial

¹⁶ Defendants' further patent application also is based on Plaintiff's '852 Patent inventions, but Defendants amended their application and claims slightly, and they very recently obtained allowance for a different pole configuration (not any of the pole configurations discussed in this Complaint). That different configuration is one that Defendants do not even make or sell, and which at least

application go abandoned. Defendants' actions are reflected in the true and correct copies of the relevant Patent Office communications shown below:

UNITED STATES PATENT AND TRADEMARK OFFICE				
		UNITED STATES DEPARTMENT OF COMMERCE United States Patent and Trademark Office Address: COMMISSIONER FOR PATENTS P.O. Box 1450 Alexandria, Virginia 22313-1450 www.uspto.gov		
APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
15/932,534	03/12/2018	James R. Conrad	CONRAD-1X	2743
38030 7590 02/28/2020 JEFFREY HALL 212 CLINTON ST SANTA CRUZ, CA 95062			EXAMINER SULLIVAN, MATTHEW J	
			ART UNIT	PAPER NUMBER
			3677	
			MAIL DATE	DELIVERY MODE
			02/28/2020	PAPER
Please find below and/or attached an Office communication concerning this application or proceeding.				
The time period for reply, if any, is set in the attached communication.				

arguably is not of any commercial value. It uses two "outer" tubes that telescope onto a central "inner" tube, with the outer tubes apparently butting into each other when the assembly is fully "collapsed." That strange configuration prevents a user from collapsing the pole to a single tube length (the "collapsed" pole would still be as long as the two outer tubes combined, because those do not collapse into each other).

<p style="text-align: center;">Notice of Abandonment</p>	<p>Application No. 15/932,534</p>	<p>Applicant(s) Conrad, James R.</p>
	<p>Examiner MATTHEW J SULLIVAN</p>	<p>Art Unit 3677</p>
<p style="text-align: center;">-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address--</p>		
<p>This application is abandoned in view of:</p>		
<p>1. <input checked="" type="checkbox"/> Applicant's failure to timely file a proper reply to the Office letter mailed on 30 July 2019.</p> <p>(a) <input type="checkbox"/> A reply was received on _____ (with a Certificate of Mailing or Transmission dated _____), which is after the expiration of the period for reply (including a total extension of time of _____ month(s)) which expired on _____.</p> <p>(b) <input type="checkbox"/> A proposed reply was received on _____, but it does not constitute a proper reply under 37 CFR 1.113 to the final rejection. (A proper reply under 37 CFR 1.113 to a final rejection consists only of: (1) a timely filed amendment which places the application in condition for allowance; (2) a timely filed Notice of Appeal (with appeal fee); or (3) if this is utility or plant application, a timely filed Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. Note that RCEs are not permitted in design applications.)</p> <p>(c) <input type="checkbox"/> A reply was received on _____ but it does not constitute a proper reply, or a bona fide attempt at a proper reply, to the non-final rejection. See 37 CFR 1.85(a) and 1.111. (See explanation in box 7 below).</p> <p>(d) <input checked="" type="checkbox"/> No reply has been received.</p>		

89. In the following section, Plaintiff discusses further evidence of Defendants' pattern of copying and infringement of Plaintiff's '852 and other related patents, and how that evidence supports not just the Court finding that Plaintiff's '852 Patent is valid and infringed by Defendants' products, but also finding that Defendants are liable for pre-issuance damages and other awards to Plaintiff.

**DEFENDANTS ARE LIABLE FOR PRE-ISSUANCE DAMAGES,
ENHANCED DAMAGES FOR WILLFUL INFRINGEMENT, AND
REASONABLE ATTORNEY'S FEES**

90. Resh realleges and incorporates by reference the allegations set forth in paragraphs 1-81.

The Court Should Award to Plaintiff Several Unusual Types of Relief

91. In patent litigation, 35 U.S. Code §283 provides for injunctive relief (such as Plaintiff is seeking in the lawsuit, to force Defendants to stop infringing Plaintiff's '852 Patent). Similarly, 35 U.S.C. §284 provides the main framework for compensatory damages in patent infringement actions: "Upon finding for the claimant the court shall award the claimant damages adequate to compensate for the infringement, but in no event less than a reasonable royalty for the use made of

1 the invention by the infringer, together with interest and costs as fixed by the
2 court.” In this lawsuit, Plaintiff is requesting those types of “conventional” relief
3 from the Court.

4 92. In certain circumstances, however, courts can make **additional awards**
5 to patent owners, including **(a) enhanced damages, (b) reasonable attorney’s**
6 **fees, and/or (c) “provisional damages”** (for infringement that occurs **prior** to
7 issuance of their patent). The facts in this case establish that, in addition to
8 conventional injunctive relief and compensatory damages, all of those other types
9 of additional awards are appropriate here and therefore the Court should award
10 them to Plaintiff.

11 93. The facts establishing the appropriateness of those additional awards to
12 Plaintiff span a number of years, and at least some of those facts support more than
13 one of those types of awards. For convenient reference, below is a summary of the
14 general legal framework for those awards, followed by at least some of the relevant
15 facts supporting those awards in this particular case.

16 94. Regarding an award of **enhanced damages** for patent infringement, 35
17 U.S.C. §284 also provides that “... the court may increase the damages up to three
18 times the amount found or assessed...” Enhanced damages serve as a punitive
19 sanction for egregious infringement behavior. In *Read Corp. v. Portec, Inc.*, 970
20 F.2d 816 (Fed. Cir. 1992), the Federal Circuit listed factors used to determine
21 whether infringers’ actions warrant punishment of treble/increased/enhanced
22 damages. The *Read* factors include the following:

- 23 (a) Whether the infringer deliberately copied the ideas or design of
24 another;
25 (b) Whether the infringer, when it knew of the other’s patent
26 protection, investigated the scope of the patent and formed a good-
27 faith belief that it was invalid or that it was not infringed;
28

- (c) The infringer's behavior as a party to the litigation;
- (d) The infringer's size and financial condition;
- (e) Closeness of the case;
- (f) Duration of infringer's misconduct;
- (g) Remedial action by the infringer;
- (h) The infringer's motivation to harm; and
- (i) Whether infringers attempted to conceal their misconduct.

95. In addition to enhanced damages, 35 U.S.C. 285 allows a court to award reasonable attorney fees to the prevailing party in exceptional cases. An exceptional case is one that stands out because of the substantive strength of a party's litigating position or the unreasonable manner in which the case was litigated. The court has considerable discretion in deciding whether to award attorney's fees. To determine whether this case is exceptional, the Court may consider factors such as:

- (a) The parties' litigating positions in the case;
- (b) Litigation misconduct;
- (c) Litigation animus;
- (d) Discovery misconduct;
- (e) The jury's verdict; and
- (f) Willfulness.

96. At this stage of this lawsuit, clearly several of those "enhanced damages" factors will depend on subsequent actions by Defendants. However, and as further alleged below, even based just on information presently available, at least factors (a) and (f) already support an award of attorney's fees. Regarding "the parties' litigating positions," Defendants have never offered even any argument that their products do not infringe, and despite having more than ten years of notice, they only recently offered any invalidity argument. They made

1 their invalidity allegations **after** Plaintiff's '852 Patent issued, and even then,
 2 Defendants' primary evidence of alleged prior art is insufficient as a matter of law.
 3 Those and other facts summarized here (and as will be shown at trial) show that
 4 Defendants' infringement has been **willful** (factor (f) above supporting an award of
 5 attorney's fees).

6 97. Regarding "provisional" **pre-issuance damages**, in relevant part 35
 7 U.S.C. §154(d) states:

8 (d) Provisional Rights.—

9 (1) In general.—In addition to other rights provided by this section, a
 10 patent shall include the right to obtain a reasonable royalty from any person
 11 who, during the period beginning on the date of publication of the
application for such patent ..., and ending on the date the patent is issued—

12 (A)

13 (i) makes, uses, offers for sale, or sells in the United States the
 14 invention as claimed in the published patent application or imports such
 an invention into the United States; or

15 (ii) if the invention as claimed in the published patent application
 16 is a process, uses, offers for sale, or sells in the United States or imports
 17 into the United States products made by that process as claimed in the
 published patent application; and

18 (B) **had actual notice** of the published patent application

19 (2) Right based on substantially identical inventions.—

20 The right under paragraph (1) to obtain a reasonable royalty shall not
 21 be available under this subsection unless **the invention as claimed in the**
 22 **patent is substantially identical to the invention as claimed in the**
published patent application.

23 (Emphasis added).

24 98. Regarding provisional/pre-issuance damages, the facts will show that the
 25 requirements above are met in this case. Among other things, (a) Defendants twice
 26 had actual notice of Plaintiff's published patent application, and (b) the invention
 27 as claimed in Plaintiff's '852 Patent is substantially identical to the invention as
 28

1 claimed in the published patent application.

2 **Further Examples of Facts Supporting the Court Awarding Those**

3 **Additional Types of Relief in this Lawsuit**

4 99. Plaintiff now alleges even further of the many facts that support those
5 additional awards to Plaintiff (beyond the facts already discussed above). Among
6 other things, Defendants have a repeated history of (a) infringing Plaintiff's
7 patents, and (b) as in the present dispute, baselessly alleging that Plaintiff's patents
8 are invalid. For **all three** of Plaintiff's patents discussed below, Defendants have
9 repeated that same pattern of behavior. Plaintiff is seeking the Court's assistance
10 to finally put a stop to Defendants' disregard for Plaintiff's rights, and Defendants'
11 disregard for basic principles of our patent and legal systems and our society more
12 generally.

13 100. The Patent Office first issued to Plaintiff a related U.S. Pat. No.
14 9,764,458 (the '458 patent), on September 19, 2017. This was the first of three
15 patents that the Patent Office has issued for Plaintiff's swimming pool pole
16 inventions. In that '458 patent, the claims are directed to telescoping poles having
17 Plaintiff's inventive detent/lever lock engagement, but also having a related "water
18 channel" feature (that helps prevent water from filling the inner tube of the pole
19 during use). This feature keeps those poles (poles that include that feature) lighter
20 during use and therefore easier to use (as compared to other embodiments that do
21 not include that water channel feature).

22 101. At the time the that '458 patent issued, Plaintiff was aware of two
23 other third-party competitors who were making poles based on Plaintiff's
24 detent/lever lock inventions. Neither of those competitors had copied the "water
25 channel" feature covered by Plaintiff's '458 patent.¹⁷

26
27 ¹⁷ These competitors were companies named Oreq and AquaEZ, two of the
28 three mentioned above. As shown from Plaintiff's original patent application

102. Even though Plaintiff was not aware of Defendants' infringement until 2018 (after the Patent Office issued Plaintiff's '458 Patent), Defendants had first developed and begun showing Defendants' infringing SnapLite poles as early as mid-2016.¹⁸ However, just a few months after Plaintiff's '458 patent issued, Plaintiff learned of Defendants' copycat SnapLite poles. More specifically, in January 2018 Plaintiff was attending a trade show in Atlantic City, New Jersey,¹⁹ and Defendants also were attending and showing pole products at that trade show.

103. At the trade show, a third party came to Plaintiff's booth and alerted Eric Resh that Defendants were displaying in Skimlite's booth a knock-off version of Plaintiff's swimming pool pole. Again, prior to this, Plaintiff had not been aware that Defendants were making, using, selling, or offering to sell any telescoping pole with Plaintiff's inventive detent/lever lock engagement (or other features). Instead, to Plaintiff's knowledge, Defendants prior poles had all used twisting and/or clamping technology.

104. Mr. Resh immediately investigated by going to Skimlite's booth. Mr. Resh saw and inspected Defendants' knock-off poles. Mr. Resh saw that, unlike the other competitors who had copied just Plaintiff's inventive detent/lever lock engagement, Defendants also had copied Plaintiff's recently-patented "water channel" feature (covered by Plaintiff's '458 patent).

105. At Defendants' trade show booth, Eric Resh then immediately photographed Defendants' knock-off pole and discussed this issue with Defendants

Claim 1 (filed in 2012 and published in 2013, and copied by Defendants in 2018), from the time of that first filing in 2012, Plaintiff has always sought patent protection for a "non-water barrier version" of Plaintiff's pole inventions. In other words, even before and regardless of the subsequent infringements by Oreq and AquaEZ (and Defendants and others), Plaintiff has sought "non-water barrier" patent claims. Plaintiff obtained that protection in the '852 Patent (as well as Plaintiff's '458 Patent).

¹⁸ This is based on Defendants' sworn testimony in the 2018 patent infringement lawsuit by Plaintiff against Defendants, discussed below.

¹⁹ The show was on January 23-25, 2018.

1 James and Barrett Conrad, the two principals of Defendant Skimlite.

2 106. During that discussion, the Conrads told Mr. Resh that they had a
3 copy of Plaintiff's '458 patent "on their desk" at their office.

4 107. During that discussion, the Conrads also said that Plaintiff's '458
5 patent was invalid. Despite alleging that the patent was invalid, Defendants did not
6 offer any explanation or evidence for why Plaintiff's '458 patent allegedly was
7 invalid.

8 108. During that same discussion, the Conrads also said that Defendants'
9 new poles did not infringe Plaintiff's '458 patent. As with Defendants' assertion
10 of invalidity, Defendants did not offer any explanation or evidence for why
11 Plaintiff's '458 patent allegedly was not infringed by Defendants' new poles.

12 109. During that discussion, the Conrads also said that Plaintiff would have
13 to sue Defendants to get Defendants to stop making Defendants' new poles.

14 110. Just a few days after the trade show in Atlantic City, Defendants again
15 showed Defendants' detent/lever poles at another trade show (the IPSSA Chapter 7
16 San Diego Show, held on or about January 27-28, 2018, in San Diego, California).
17 Defendants' actions made it clear that Defendants were not going to stop infringing
18 Plaintiff's '458 patent. Accordingly, Plaintiff did file a lawsuit against Defendants
19 in early February 2018 (Case No. CACD: 5:18-00291 JGB (KK)).

20 111. During that lawsuit, Defendants swore under penalty of perjury that
21 the version of Defendants' poles that Plaintiff had seen at the trade show in late
22 January 2018 was Defendants' 5th iteration of Defendants' detent/lever SnapLite
23 poles, and that Defendants had first begun showing Defendants' SnapLite poles as
24 early as mid-2016. As noted above, Plaintiff did not become aware of Defendants'
25 detent/lever poles until January 2018.

26 112. That 2018 lawsuit was rather short-lived. Rather than litigate the
27 merits of Defendants' infringement and/or validity of Plaintiff's '458 patent,
28

1 Defendants' modified their poles to eliminate the '458 patent's water channel
2 feature, in order to moot the lawsuit. The Court dismissed the lawsuit based on
3 Defendants' representations that Defendants (1) had only made a few sample poles
4 of the infringing design and (2) had changed their design to remove the infringing
5 water channel.

6 113. Because of the other infringers (who had not included the water
7 channel in their poles), Plaintiff already was seeking additional patent protection
8 for Plaintiff's pole inventions (to cover embodiments of Plaintiff's inventions
9 regardless of whether the water channel feature was included). As further
10 discussed herein, Plaintiff's efforts eventually were successful, in part because of
11 the copying by Defendants and third parties. Plaintiff documented and showed that
12 copying to the Patent Office, as evidence that Plaintiff's pole inventions were
13 patentable. Because the Patent Office Examiner did not properly consider that
14 evidence (Defendants' copying, etc.), however, Plaintiff had to eventually file two
15 appeals in the Patent Office. Plaintiff's appeals succeeded, and eventually (in
16 August and October 2021), the Patent Office awarded to Plaintiff not just the '852
17 Patent, but another related patent, U.S. Pat. No. 11,090,798 (Plaintiff's '798
18 Patent).

19 114. Plaintiff's '798 Patent covers tubes/poles having multiple sets of
20 attachment holes for attaching the tool to the pole. As further discussed below,
21 while Plaintiff was pursuing that additional patent protection (and again without
22 Plaintiff's knowledge), Defendants were busy secretly copying Plaintiff's '798
23 inventions into virtually all of Defendants' poles (even Defendants' old-style
24 twist/clamp lock poles).²⁰ Specifically, and on information and belief, Defendants
25

26 ²⁰ Plaintiff only became aware of Defendants' further '798 infringement upon
27 later seeing that patented feature for sale on Defendants' commercial
28 twisting/clamping poles. As further discussed below, Plaintiff intends to pursue
relief for that infringement separately from this lawsuit.

1 added Plaintiff's '798 Patent "multiple sets of attachment holes" inventions into
 2 not just Defendants' lever-lock poles (that infringe Plaintiff's '852 patent).
 3 Defendants added that feature to all of Defendants' "prior art" twisting/clamping
 4 poles. Among other things, this is again evidence that Defendants believe that
 5 Plaintiff's '798 Patent "multiple sets of attachment holes" inventions are valuable
 6 and sufficiently important to add to all of Defendants' products.

7 115. Among the many other reasons for awarding additional relief to
 8 Plaintiff is Defendants' failure to comply with the Patent Office requirements, in
 9 an apparent effort to commit fraud on the Patent Office in connection with
 10 Defendants' 2018 patent application. Specifically, Defendants violated their duty
 11 to the Patent Office, by failing to bring to the Examiner's attention Plaintiff's 2013
 12 published patent application, even though (as discussed above) Defendants clearly
 13 had copied claims from that very publication!

14 116. The U.S. Patent Office rules expressly require all applicants to
 15 disclose information that is material to whether the applicant's invention may be
 16 patentable. Pertinent parts of that duty (as set forth in 37 CFR 1.56 Duty to
 17 disclose information material to patentability) are copied and highlighted below:

18
 19 **37 CFR 1.56 Duty to disclose information material to patentability.**

20 (a) A patent by its very nature is affected with a public interest. The
 21 public interest is best served, and the most effective patent examination
 22 occurs when, at the time an application is being examined, the Office is
 23 aware of and evaluates the teachings of all information material to
 24 patentability. **Each individual associated with the filing and prosecution**
 25 **of a patent application has a duty of candor and good faith in dealing**
 26 **with the Office, which includes a duty to disclose to the Office all**
 27 **information known to that individual to be material to patentability** as
 28 defined in this section. The duty to disclose information exists with respect
 to each pending claim until the claim is cancelled or withdrawn from
 consideration, or the application becomes abandoned. Information material
 to the patentability of a claim that is cancelled or withdrawn from

consideration need not be submitted if the information is not material to the patentability of any claim remaining under consideration in the application. There is no duty to submit information which is not material to the patentability of any existing claim. The duty to disclose all information known to be material to patentability is deemed to be satisfied if all information known to be material to patentability of any claim issued in a patent was cited by the Office or submitted to the Office in the manner prescribed by §§ 1.97(b)-(d) and 1.98. However, **no patent will be granted on an application in connection with which fraud on the Office was practiced or attempted or the duty of disclosure was violated through bad faith or intentional misconduct. The Office encourages applicants to carefully examine:**

(1) Prior art cited in search reports of a foreign patent office in a counterpart application, and

(2) **The closest information over which individuals associated with the filing or prosecution of a patent application believe any pending claim patentably defines, to make sure that any material information contained therein is disclosed to the Office.**

117. It is difficult to imagine how any information could be “closer” to Defendants’ 2018 patent application than Plaintiff’s 2013 publication from which **Defendants copied** Defendants’ Claim 1. Despite Defendants’ copying from Plaintiff’s 2013 publication, Defendants failed to file that information (Plaintiff’s 2013 publication) with the Patent Office.

118. As mentioned above, Defendants’ copying from Plaintiff’s 2013 published patent application is not just Defendants admitting infringement, but also is directly relevant to showing that Defendants are liable for pre-issuance damages. Defendants’ near verbatim copying from Plaintiff’s 2013 published patent application (discussed above) is an admission that Defendants “**had actual notice** of [Plaintiff’s 2013] published patent application” as required in order for Defendants to be liable for pre-issuance damages.

119. In the interest of completeness, Plaintiff discusses below further

1 details regarding an obvious typographical error in Plaintiff's above Claim 1 as
 2 published by the Patent Office in 2013.²¹ The error could hardly be simpler – it
 3 involved just two words. Here is a portion of a more detailed discussion below
 4 (explaining actions Plaintiff took in the Patent Office to correct the obvious
 5 error),²² highlighting those two erroneous words:

6 File No. RESH-P3841.4

Serial No. 15/708,038

7 In the interest of making a complete and convenient record, Applicant sets
 8 forth below a copy of the mistake in Claim 1 as it was published. Again:

9 (a) FIRST should be SECOND; and (b) INNER should be OUTER:

10
 11 1. An improved telepole device, comprising:
 12 an outer tube element having first and second ends, said
 13 first end of the outer tube element having a collar ele-
 14 ment associated therewith, said collar element contain-
 15 ing a detent means;
 16 an inner tube element having first and second ends, said
 17 first end of the inner tube having attachment means for
 18 removably attaching a tool;
 19 said second end of said inner tube element being received
 20 in the first end of the outer tube through an opening in
 21 said collar element;
 22 wherein said inner tube element is configured to readily
 23 slide within said outer tube element to a selected posi-
 24 tion along the length of the outer tube, and wherein said
 25 detent means is configured to temporarily lock the inner
 26 tube in that selected position within the outer tube.

27 120. As shown in the table below, Defendants' claims are so virtually

28
 21 Plaintiff copies below substantial portions of Plaintiff's corrective filing
 and explanation in the Patent Office records. Following Plaintiff's filing, the
 Patent Office issued the corrected "Published Claim 1" as Claim 21 of Plaintiff's
 '852 Patent.

22 Again, this is an excerpt of Plaintiff's filing in the Patent Office, which led
 the Patent Office to issue the corrected version of the claim.

identical (to even the uncorrected version of Plaintiff's 2013 published claim) that there can be no other explanation. When Defendants filed their patent application in March 2018, Defendants had **actual notice** of Plaintiff's patent claims that the Patent Office had published in 2013. As shown below, in their own March 2018 application, Defendants actually copied Plaintiff's published patent Claim 1:

<u>Plaintiff RESH's Claim 1</u> <u>(PUBLISHED 2013)²³</u>	<u>Defendants' Claim 1</u> <u>(Filed 2018)²⁴</u>
1. An improved telepole device, comprising:	1. An apparatus for cleaning swimming pools, cement finishing tools, ceiling wire applications, and the like, comprising:
an outer tube element having first and second ends, said first end of the outer tube element having a collar element associated therewith, said collar element containing a detent means; an inner tube element having first and second ends, said first end of the inner tube having attachment means for removably attaching a tool;	an outer tube having a first end and a second end, said first end of the outer tube having a collar housing and angled detent, said second end of said outer tube having means for attaching a tool;

²³ U.S. Patent Office Publ. No. US2013/0326832.

²⁴ As shown in U.S. Patent Office PUBLICATION US20190275659A1, published 2019-09-12. Defendants likewise similarly copied from Plaintiff's 2013 publication Defendants' two other independent claims, Claims 9 and 16.

<u>Plaintiff RESH's Claim 1</u> <u>(PUBLISHED 2013)²³</u>	<u>Defendants' Claim 1</u> <u>(Filed 2018)²⁴</u>
<p>said second end of said inner tube element being received in the first end of the outer tube through an opening in said collar element;</p> <p>wherein said inner tube element is configured to readily slide within said outer tube element to a selected position along the length of the outer tube, and wherein said detent means is configured to temporarily lock the inner tube in that selected position within the outer tube.</p>	<p>a dodecagon shaped inner tube having a first end and a second end, and includes a detachable grooved grip for grasping and positioning the apparatus; said second end of said inner tube is adapted and configured to be received within said outer tube within an aperture in said collar housing; the inner tube is shaped to slide within said outer tube to a selected position in relation to said outer tube, allowing for said angled detent to position and secure the inner tube within the outer tube; and</p>
	<p>a plurality of apertures aligned on the inner tube, so that the angled detent, which includes a locking means, may be operably engaged with one of said apertures, to secure and position the inner tube at a selected position within said outer tube.</p>

121. Here is a portion of materials Plaintiff filed in the Patent Office to correct that obvious error (setting forth just some of the many reasons that error was obvious):

Based Applicant's review of the entire publication, these two words themselves (within published Claim 1) are the only instance of this mistake – all of the many other drawings and specification references and the Abstract (such as the examples shown above) show only the correct concept – tool attachment means on the second end of the outer tube. Thus, the plain language and drawings of the

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HTTPS://D.DOCSS/LIVE/VIEW/DOC/ID/458260/CLIENT/RESH/P3841.4_USPA_POLE_COAT_BHL/PTO/COMMUNICATIONS/01940401_DAB19-05-06_REPLY_RESPONSE/019_01_15_02_REPLY_RESP_2019_04_01_CA_FINAL.DOCX

File No. RESH-P3841.4

Serial No. 15/708,038

published application demonstrate and make obvious the above error, especially to any persons of ordinary skill in the art.

Among other things, persons of ordinary skill in the art would be familiar with prior art telescoping swimming pool tools, which typically had their attachment means on the outer tube, at the "second" end. To Applicant's current knowledge, all of the prior art swimming pool poles (including those described in the various declarations and related videos and images filed in Applicant's IDS) show the attachment means on the outer tube, at the "second" end (see, for example, the Skimlite twist-lock poles discussed in Applicant's filings).

Especially in view of Applicant's 2013 publication in its entirety, persons of ordinary skill in the art will understand that same approach (attachment means on the outer tube, at the "second" end) was intended by Applicant in Applicant's Claim 1 as published in December 2013. Those persons of ordinary skill in the art would have understood that Applicant intended to and was pursuing patent protection for poles with attachment means on the outer tube, at the "second" end. To assert that Applicant instead was pursuing patent protection for poles with attachment means on the inner tube, at the "first" end, would make no sense.

In that regard, and perhaps as importantly, there does not appear to be any way that an apparatus could be constructed consistently with the mistaken

122. Plaintiff submits that, even with that obvious error, Plaintiff's issued claim (Claim 21 in the '852 Patent) meets the requirement of being "substantially identical" to Plaintiff's published claim (Claim 1 above). The obvious nature of that error is just one of many additional reasons (including those discussed further below) that the "substantially identical" requirement is met (for purposes of the Court awarding pre-issuance damages to Plaintiff).

123. In fact, Defendants' copying of Plaintiff's "corrected" claim language effectively is an even further admission by Defendants - that Defendants understood that the published Claim 1 included an obvious error, and that the published error was obvious to anyone reviewing the publication (such as Defendants).

124. Below is a table similar to the one early in the Complaint, but comparing the corrected Claim 1 (that issued as Claim 21) to Defendants' copied version of that claim. Defendants' copying (of the obviously "correct" claim) results in the Defendants' additional identical language highlighted in gray, in the second row of the table below:

<u>Plaintiff RESH's Claim 1 (With Obvious Two Word Error CORRECTED)</u>	<u>Defendants' Claim 1 (Filed 2018)</u>
1. An improved telepole device, comprising:	1. An apparatus for cleaning swimming pools, cement finishing tools, ceiling wire applications, and the like, comprising:

<u>Plaintiff RESH's Claim 1 (With Obvious Two Word Error CORRECTED)</u>	<u>Defendants' Claim 1 (Filed 2018)</u>
<p>an outer tube element having first and second ends, said first end of the outer tube element having a collar element associated therewith, said collar element containing a detent means; an inner tube element having first and second ends, said first second end of the inner outer tube having attachment means for removably attaching a tool;</p>	<p>an outer tube having a first end and a second end, said first end of the outer tube having a collar housing and angled detent, said second end of said outer tube having means for attaching a tool;</p>
<p>said second end of said inner tube element being received in the first end of the outer tube through an opening in said collar element;</p> <p>wherein said inner tube element is configured to readily slide within said outer tube element to a selected position along the length of the outer tube, and wherein said detent means is configured to temporarily lock the inner tube in that selected position within the outer tube.</p>	<p>a dodecagon shaped inner tube having a first end and a second end, and includes a detachable grooved grip for grasping and positioning the apparatus; said second end of said inner tube is adapted and configured to be received within said outer tube within an aperture in said collar housing; the inner tube is shaped to slide within said outer tube to a selected position in relation to said outer tube, allowing for said angled detent to position and secure the inner tube within the outer tube; and</p>
	<p>a plurality of apertures aligned on the inner tube, so that the angled detent, which includes a locking means, may be operably engaged with one of said apertures, to secure and position the inner tube at a selected position within said outer tube.</p>

125. In other words, the “corrected” language of the claim is **exactly** what Defendants used in their own patent application. It was obvious to Defendants that Plaintiff’s published Claim 1 (above) had two words inadvertently in error, so Defendants “copied” the corrected version of that claim into Defendants’ 2018

patent application. Here again is that evidence, showing (a) not only that Defendants had the required “actual notice” of Plaintiff’s published claim, but (b) also that Defendants understood that Plaintiff’s published claim had an obvious error in it – Defendants **corrected** that error in Defendants’ own filing!

<u>Plaintiff RESH’s Claim 1 (With Obvious Two Word Error CORRECTED)</u>	<u>Defendants’ Claim 1 (Filed 2018)</u>
an outer tube element having first and second ends, said first end of the outer tube element having a collar element associated therewith, said collar element containing a detent means; an inner tube element having first and second ends, said first second end of the inner outer tube having attachment means for removably attaching a tool;	an outer tube having a first end and a second end, said first end of the outer tube having a collar housing and angled detent, said second end of said outer tube having means for attaching a tool;

126. In addition to having **actual notice** of the Patent Office’s foregoing 2013 publication of Plaintiff’s application, Defendants likewise had **actual notice** of a second Patent Office publication related to Plaintiff’s ‘852 Patent claims. Defendants’ actual notice of this second Patent Office publication is indisputable based on Patent Office records from Defendants’ own above-mentioned patent application. As set forth above (and as excerpted below), in a February 2020 communication, the Patent Office sent to Defendants a copy of Plaintiff’s published U.S. Patent Publication No. 2018/0009099:²⁵

²⁵ Plaintiff notes that Defendants may have received “actual notice” of Plaintiff’s claims in this second publication earlier and/or through other means (besides the indisputable communication of same from the Patent Office to Defendants).

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Art Unit: 3677

Page 6


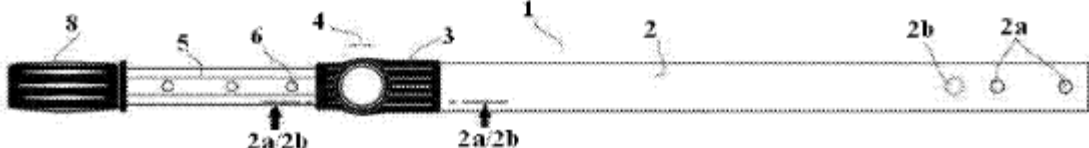
Claims 1, 4-7, 9, 12-16 and 18-19 (properly 19-20) is/are rejected under 35 U.S.C. 103 as being unpatentable over Resh, U.S. Patent Application 2018/0009099 in view of Holden, U.S. Patent 6,805,271.

127. As mentioned above, in that same Patent Office communication, the Patent Office Examiner sent the following list of references that the Examiner had located, and included the foregoing Plaintiff's patent publication at the very top of the list (the following is a true and correct copy of a portion of that Patent Office record):

<i>Notice of References Cited</i>				Application/Control No. 15/932,534	Applicant(s)/Patent Under Reexamination Conrad, James R.	
				Examiner MATTHEW J SULLIVAN	Art Unit 3677	Page 1 of 3
U.S. PATENT DOCUMENTS						
*		Document Number Country Code-Number-Kind Code	Date MM-YYYY	Name	CPC Classification	US Classification
*	A	US-20180009099-A1	01-2018	Resh; Eric V.	B25G3/18	1/1
*	B	US-6805271-B2	10-2004	Holden; William	A47K10/38	206/409
*	C	US-5092262-A	03-1992	Lacy; Franklin R.	B63B19/02	114/343
*	D	US-4417744-A	11-1983	Spear; Kenneth J.	B62J1/08	248/411
*	E	US-20190118393-A1	04-2019	Browne; Benjamin Alan	B25B9/00	1/1
*	F	US-20180281169-A1	10-2018	Cromartie; Brad	B25G1/04	1/1
*	G	US-20180103819-A1	04-2018	Hoyle; Mark Allen	B25G1/04	1/1
*	H	US-9999970-B2	06-2018	Browning; Don Robert	B25G1/10	1/1
*	I	US-20170282348-A1	10-2017	MARK; MOSHE	A46B5/0095	1/1
*	J	US-10091948-B2	10-2018	Pringnitz; Todd	A01G3/083	1/1
*	K	US-8939051-B1	01-2015	Lofley, Sr.; Robert G.	F16B7/1418	294/210
*	L	US-9120217-B2	09-2015	Fischer, Jr.; Gary M.	B25G1/04	1/1
*	M	US-9427854-B2	08-2016	Leighton; Lisa	B25B13/06	1/1

128. Below is a true and correct copy of a portion of that Patent Office record (the first page of that Patent Office second publication related to Plaintiff's '852 Patent application). Among other things, the publication date is January 11, 2018, just prior to the 2018 lawsuit by Plaintiff against Defendants discussed herein. Upon information and belief, Plaintiff alleges that Defendants had actual

notice of this publication much earlier than the February 2020 Patent Office communication. More specifically, and again upon information and belief, Plaintiff alleges that Defendants had **actual notice** of this publication at least as early as on or around the time of the aforementioned 2018 lawsuit, in connection with (a) being found out and then sued by Plaintiff in early 2018 and (b) Defendants' related efforts to defend against that lawsuit or otherwise:

 US 20180009099A1	
(19) United States	(10) Pub. No.: US 2018/0009099 A1
(12) Patent Application Publication	(43) Pub. Date: Jan. 11, 2018
Resh	
(54) TELEPOLE APPARATUS AND RELATED METHODS	(52) U.S. CL. CPC B25G 1/04 (2013.01); B25G 3/18 (2013.01)
(71) Applicant: Eric V. Resh , Temecula, CA (US)	(57) ABSTRACT
(72) Inventor: Eric V. Resh , Temecula, CA (US)	An improved telepole device having attachment means for attaching swimming pool cleaning, and other tools. The improved telepole device preferably includes an inner tube which freely slides within an outer tube, and a locking device to temporarily secure the inner tube in a desired position within the outer tube. A preferred lightweight design may be at least partially hollow along the length of the tube(s), and durability may be provided by inner/reinforcement wall(s) that extend across the hollow portion(s) of one or both of the tubes. On the end of the outer tube through which the inner tube slides/extends is a collar element attached thereto and comprised of a locking device having a detent mechanism for "locking" the inner tube in place within the outer tube. Preferably, the collar's opening and the profile of the inner tube have one or more sides that, due to their relative position with respect to each other, can prevent the inner tube from rotating within the collar. Further, the inner tube preferably has a series of holes along its length which are positioned to receive a pin element of the detent mechanism. Further, the end of the outer tube opposite the collar preferably has attachment holes configured to receive attachable and detachable swimming pool cleaning tools, and an additional set of holes that allow water to drain from the outer tube while a tool is attached.
(21) Appl. No.: 15/708,038	
(22) Filed: Sep. 18, 2017	
Related U.S. Application Data	
(63) Continuation of application No. 13/624,702, filed on Sep. 21, 2012, now Pat. No. 9,764,458, Continuation-in-part of application No. 13/844,561, filed on Mar. 15, 2013.	
(60) Provisional application No. 61/538,074, filed on Sep. 22, 2011, provisional application No. 61/538,074, filed on Sep. 22, 2011.	
Publication Classification	
(51) Int. Cl. B25G 1/04 (2006.01) B25G 3/18 (2006.01)	
	

129. Regarding the second main requirement above for an award of "provisional/pre-issuance" damages, Plaintiff's issued '852 Patent claims include

ones that are “substantially identical” to ones that were published, and that cover Defendants’ pole products. Regarding the Patent Office’s publication of Plaintiff’s application in December 2013, and as briefly mentioned above, Plaintiff discussed this “substantially identical” in a filing with the Patent Office (filed on October 18, 2019). True and correct copies of relevant portions of that filing are set forth below. Upon information and belief, the statements set forth below (from that October 18, 2019 filing) themselves are true and correct:

In addition, in the present amendment Applicant has added “new” Claims

53-55. As explained below, these are the same Claims as original Claims 1-3 that were published on Dec. 12, 2013 (in the parent application (Ser. No. 13/844,561) as Publ. No. US2013/0326832), with the exception of correcting a typographical error in Claim 1/53. During earlier prosecution of Applicant’s relevant applications, Applicant had canceled those claims. Applicant now seeks allowance of same as discussed below.

More specifically, in the October 16, 2019 IDS materials (including the several declarations filed therewith) and in the remarks below, Applicant seeks to:

1. Further confirm and authenticate certain portions of the materials and information filed October 1, 2019 (in case that is helpful or necessary), via portions of the Declaration of Eric Resh.

1
2 **2. Claims 1-3 (New Claims 53-55) Were Published With a Typo that was**
3 **Apparent to Persons of Ordinary Skill in the Art**

4 As noted above, Applicant is adding “new” Claims 53-55 to this application
5 via this Second Supplemental Amendment, and those are copies (with one
6 corrected typo) of previously published Claims 1-3. Apparently, there is no
7 requirement for Applicant to provide the following explanation regarding that
8 typographical error, and the Examiner may have no authority or responsibility to
9 review and consider same. Thus, rather than include this section of remarks in this
10 filing, Applicant apparently could simply (a) add these claims as new Claims 53-55
11
12
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14

1 File No. RESH-P3841.4

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2 as set forth below and (b) request that those claims be allowed along with the other
3 claims pending herein.

4
5 Instead, however, in an excess of caution and in an effort at transparency,
6 Applicant takes this opportunity to respectfully try to provide a clear prosecution
7 record regarding adding back those Claims 53-55 below (previously published as
8 Claims 1-3). Applicant's efforts in that regard include this section (explaining a
9 typographical error in Claim 1 as it was published) and section 3 below (discussing
10 the prosecution history of that Claim 1).

11
12 Applicant also notes that Claims 2 and 3 also were published and depended
13 from Claim 1, and Applicant has repeated that dependency in Claims 54 and 55
14 added as new claims below. As set forth in section 4 below, especially that Claim
15 2/54 should be allowed as being very similar to other claims that were already
16 pending herein.

17
18 Claim 1 as published is at least similar in scope to claims pending in the
19 current application. For convenience and by way of example, Applicant has
20 prepared the table below comparing Claim 1 (as originally published in December
21 2013) with currently pending Claim 34. As shown below, those claims have
22 substantial portions that are nearly identical: (a) exact/matching language is
23
24

highlighted in yellow, (b) other language is not highlighted, and (c) the aforementioned typographical mistake is highlighted in purple:

said inner tube configured to slide within said outer tube to a selectable position relative to the outer tube, at which position said detent is configured to temporarily engage and

https://docs.live.net/api/v1/clients/besw08614394_PRR_CONT_001.UPTO.COMBODICA.TCHN/00004-00_04/2019-06%20PRR_RESPOND/2019%20-%202019%20-%20CA_FINAL.DOCX

hold said inner tube

1 As mentioned above, Applicant has corrected the above typographical error
2 in filing the corresponding “new” Claim 53 below. Specifically, the language in
3 the left column above is copied into Claim 53 with the exception of correcting the
4 two purple words (“first” corrected to “second,” and “inner” corrected to “outer”).
5

6 As further explained below, Applicant respectfully submits that the above
7 error in published Claim 1 would have been obvious to a person of ordinary skill in
8 the art when reviewing Applicant’s 2013 published application. Such persons of
9 ordinary skill in the art would have understood that, instead of the two purple
10 words above, that part of Claim 1 was intended to address and define the second
11 end of the outer tube.
12

13 Those persons of ordinary skill in the art would have included Applicant’s
14 competitors and other third parties. In addition to the plain intent and meaning of
15 the publication as a whole (discussed below), those competitors and other third
16 parties also would have likely seen Applicant’s commercial products (which
17 embody the correct construction of the second end of the outer tube), and/or have
18
19

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received other actual notice of the correct “claim” focus of that Claim 1, prior to the copying of Applicant’s invention that is discussed in Applicant’s aforementioned October 1, 2019 filing.

Examples of Applicant introducing and promoting Applicant’s pole inventions at trade shows and in other publications, and the industry’s reception and reactions to those promotions, are discussed in the various declarations filed in Applicant’s recent IDS. The declarations and other materials also show the reactions of multiple competitors who saw Applicant’s pole inventions – competitors quickly began copying Applicant’s inventions. Clearly, those competitors understood the thrust of Applicant’s patent efforts, because they copied them.

Applicant’s mistake/error in the language of Claim 1 is plainly evident in the December 2013 publication as a whole. Although the mistake would have been obvious to anyone reading the publication, it would have been especially obvious to persons of ordinary skill in the art. As explained below, throughout the publication (including repeatedly on the first page of the publication), Applicant discloses and explains that the tool attachment means is on second end of the outer tube. In that regard, below are some highlighted excerpts from the application as published in December 2013. These demonstrate that the Claim 1 error

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(highlighted in purple above) was a mistake that would have been evident to any persons of ordinary skill in the art reviewing that publication, and that the correct/actual claim protection being sought by Applicant was for attachment means on the second end of the outer tube.

In fact, except for the single typographical error in Claim 1 itself, the entire publication, including the Abstract and specification and drawings, shows that the relevant tool attachment means is on the second end of the outer tube. Below are examples from the publication itself (with highlighting):

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FRONT PAGE (the lower half of the page is a copy of Fig. 26):

US 20130326832A1

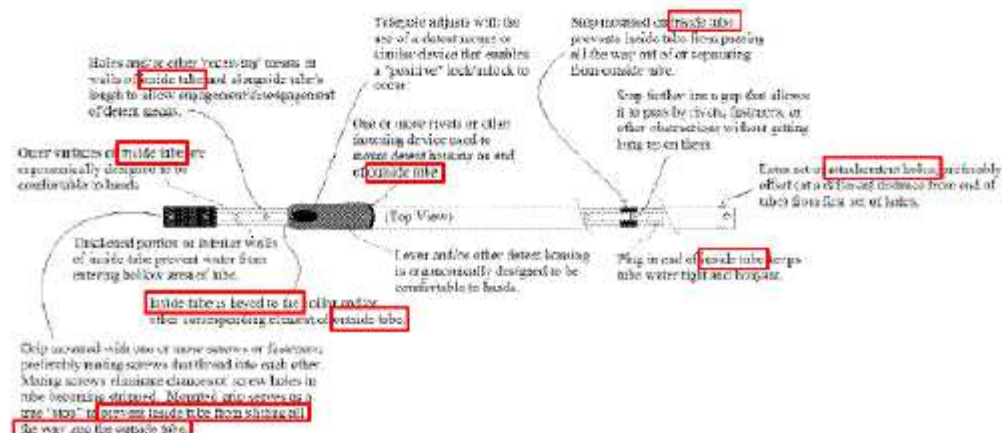
(19) **United States**(12) **Patent Application Publication**
RESH(10) **Pub. No.: US 2013/0326832 A1**(43) **Pub. Date: Dec. 12, 2013**(54) **TELEPOLE APPARATUS AND RELATED METHODS**(52) **U.S. Cl.**CPC **B25G 1/04** (2013.01)USPC **15/144.4; 81/489**(71) Applicant: **ERIC V. RESH, Temecula, CA (US)**(72) Inventor: **ERIC V. RESH, Temecula, CA (US)**(21) Appl. No.: **13/844,561**(22) Filed: **Mar. 15, 2013****Related U.S. Application Data**

(63) Continuation-in-part of application No. 13/624,702, filed on Sep. 21, 2012.

(60) Provisional application No. 61/538,074, filed on Sep. 22, 2011.

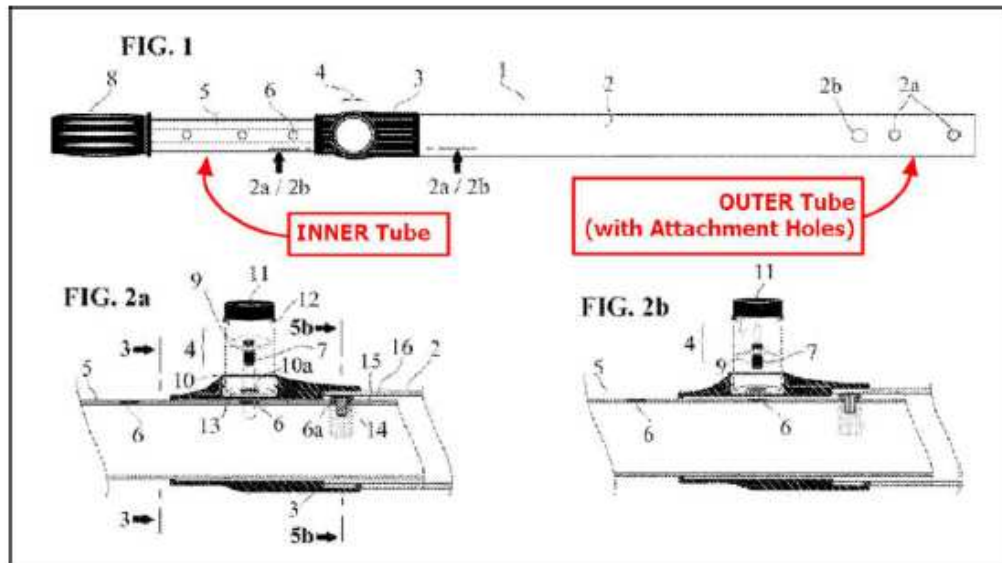
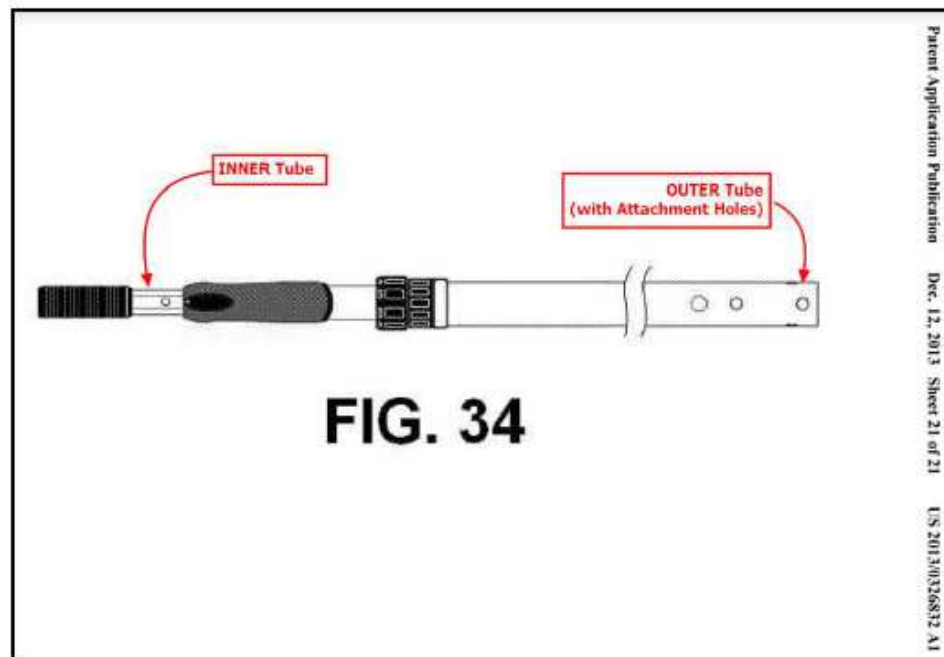
Publication Classification(51) **Int. Cl.**
B25G 1/04 (2006.01)(57) **ABSTRACT**

An improved telepole device having attachment means for attaching swimming pool cleaning, and other tools. The improved telepole device preferably includes an inner tube which freely slides within an outer tube, and a locking device to temporarily secure the inner tube in a desired position within the outer tube. A preferred lightweight design may be at least partially hollow along the length of the tube(s), and durability may be provided by inner/reinforcement wall(s) that extend across the hollow portion(s) of one or both of the tubes. On the end of the outer tube through which the inner tube slides/extends is a collar element attached thereto and comprised of a locking device having a detent mechanism for "locking" the inner tube in place within the outer tube. Preferably, the collar's opening and the profile of the inner tube have one or more sides that, due to their relative position with respect to each other, can prevent the inner tube from rotating within the collar. Further, the inner tube preferably has a series of holes along its length which are positioned to receive a pin element of the detent mechanism. Further, the end of the outer tube opposite the collar preferably has attachment holes configured to receive attachable and detachable swimming pool cleaning tools, and an additional set of holes that allow water to drain from the outer tube while a tool is attached.

IMPROVED TELESCOPIC POLE: PREFERRED EMBODIMENT

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Page TWO, Figure 1:**FIG. 34:****FIG. 34**

13

HTTPS://D.DOCX.LIVE.NET/365D5D3A52BD96FC/CLIENTS/RESH/P3841.4_USPA_POLE_CONT_3841.1/PTO COMMUNICATIONS/2019-04-01_OA/2019-10-06_SUPPL_RESPONSE/2019_10_18_2D_SUPPL_RESP_2019_04_01_OA_FINAL.DOCX

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Pars. 26 and 27 of the specification:

US 2013/0326832 A1

4

position with respect to each other, can prevent the inner tube from rotating within the collar. Further, the inner tube preferably has a series of holes along its length which are positioned to receive a pin element of the detent mechanism. The pin element is preferably attached to a spring element and held in place by a housing which is formed into the collar. In its normal "resting" position, the spring pushes the pin towards the inner tube such that, when the pin is aligned with one of the holes in the inner tube, the pin sits in the hole and "locks" the inner tube in position so that it cannot slide/rotate within the outer tube or collar. Also preferably, within an upper portion of the housing above the pin is a button that, when depressed, forces the spring to reverse itself from its normal "resting" position and consequently lifts/releases the pin from its normal position in the housing so that the inner tube may be moved to a new position. Further, the end of the outer tube opposite the collar preferably has attachment holes configured to receive attachable and detachable swimming pool cleaning tools, and an additional set of holes that allow water to drain from the outer tube while a tool is attached.

[0027] A further object of my invention is to provide a telepole for cleaning swimming pools, with a detent mechanism as described above, and characteristics that prevent water from entering the inner tube during use so as to preserve the inner tube's buoyancy. In a preferred embodiment, a barrier is formed or otherwise provided inside the inner tube along its length and adjacent to the length-selection holes, to prevent water that may flow through those holes from entering the bulk of the inside portion of the inner tube. In addition, the telepole's buoyancy preferably is further maintained by a plug which is preferably mounted into or otherwise on the end of the inner tube that is opposite the gripping portion. The plug prevents water from entering the inner tube through its end. The end of the outer tube opposite the collar preferably has holes configured to receive attachable and detachable swimming pool cleaning tools.

[0028] Another object of my invention is to provide a telepole for cleaning swimming pools, with a compression device

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Par. 95:

Dec. 12, 2013

6

out a detent locking device 4 mounted thereon, and an inner/upper tube 5 that slides through an opening in the collar element and within the outer tube. Preferably, the inner/upper tube has a profile with a smaller circumference than that of the opening of the collar element and the outer/lower tube so that it may readily slide within/through those elements in order to provide a telepole device having an adjustable length. Further, the inner/upper tube has a gripping portion 8 that may be attached with rivets, screws or other temporary or (semi-) permanent attachment devices. The gripping portion provides an area for a user to grip/grasp the telepole device and also prevents the inner tube from sliding entirely within the outer tube as the circumference of the gripping portion is larger than that of the collar element and/or outer/lower tube. Further, attachment devices (rivets, screws, or the like) can prevent the gripping portion from being "bumped" off the end of the tube when the inner tube slides into the outer tube, and they also make removing and/or replacing a worn handle possible.

[0095] Preferably, the outer/lower tube has a series of openings/holes 2a for receiving attachment means of cleaning tools, and has at least one drain hole 2b for allowing water trapped in the outer/lower tube to drain out. As will be further described herein, some of the many alternative embodiments of the invention can be practiced without all of these elements. Moreover, persons of ordinary skill in the art will understand that the elements described herein may even be provided in other embodiments in a wide variety of other forms depending on the desired use/application of the device.

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Pars. 167 and 168:

[0166] Housing is mounted to outside tube in a manner that makes the housing removable/replaceable.

[0167] End of outer tube has additional set of holes about its diameter to receive attachable/detachable tools

[0168] Additional set of tool attachment holes is placed at a different distance from tube's end than first set of tool attachment holes.

[0169] Telepole with compression locking device, said compression device (as in FIGS. 10, 11, 12a-d) having the ability to 'mate' with ribs, ridges, etc. formed on inside tube.

Dec. 12, 2013

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In the interest of making a complete and convenient record, Applicant sets forth below a copy of the mistake in Claim 1 as it was published. Again:

(a) FIRST should be SECOND; and (b) INNER should be OUTER:

1. An improved telepole device, comprising:
 an outer tube element having first and second ends, said first end of the outer tube element having a collar element associated therewith, said collar element containing a detent means;
 an inner tube element having first and second ends, said first end of the inner tube having attachment means for removably attaching a tool;
 said second end of said inner tube element being received in the first end of the outer tube through an opening in said collar element;
 wherein said inner tube element is configured to readily slide within said outer tube element to a selected position along the length of the outer tube, and wherein said detent means is configured to temporarily lock the inner tube in that selected position within the outer tube.

Based Applicant's review of the entire publication, these two words themselves (within published Claim 1) are the only instance of this mistake – all of the many other drawings and specification references and the Abstract (such as the examples shown above) show only the correct concept – tool attachment means on the second end of the outer tube. Thus, the plain language and drawings of the

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published application demonstrate and make obvious the above error, especially to any persons of ordinary skill in the art.

Among other things, persons of ordinary skill in the art would be familiar with prior art telescoping swimming pool tools, which typically had their attachment means on the outer tube, at the “second” end. To Applicant’s current knowledge, all of the prior art swimming pool poles (including those described in the various declarations and related videos and images filed in Applicant’s IDS) show the attachment means on the outer tube, at the “second” end (see, for example, the Skimlite twist-lock poles discussed in Applicant’s filings). Especially in view of Applicant’s 2013 publication in its entirety, persons of ordinary skill in the art will understand that same approach (attachment means on the outer tube, at the “second” end) was intended by Applicant in Applicant’s Claim 1 as published in December 2013. Those persons of ordinary skill in the art would have understood that Applicant intended to and was pursuing patent protection for poles with attachment means on the outer tube, at the “second” end. To assert that Applicant instead was pursuing patent protection for poles with attachment means on the inner tube, at the “first” end, would make no sense.

In that regard, and perhaps as importantly, there does not appear to be any way that an apparatus could be constructed consistently with the mistaken

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language. In other words, if the INNER tube had the attachment means at its second end, the inner tube could not be telescoped out of or extended from the outer tube. Instead, the inner tube would be “locked” from telescoping out of the outer tube, by the grip at a first end and the attached tool at its second end. Extending or retracting that inner tube would be impossible – the outer tube would at most be slidable along the length of the inner tube (like a roll of paper towels moving slightly to the left or right around the fixed length of a center rod). The overall length of the “center/inside” pole/rod would not be adjustable – it would be fixed to the exact length of that “locked inside” inner tube.

3. Original Claim 1 (New Claim 53) Should be Allowed as Corrected

Below is a summary of the prosecution history of Claim 1 (“new” Claim 53 below), beginning from the original parent application.

<i>Date</i>	<i>Patent Office Action Description</i>	<i>Applicant Action re Claim 1</i>
December 12, 2013	Published as US2013/0326832	
Feb 26, 2015 Office Action	Rejected under 102(b) over Lofley publication ‘357, and by Fenstemaker publication ‘738.	Applicant amended Claim 1
Nov 18, 2015 Final Office Action	Rejected under 103(a) over Lanzarone in view of Canale or Goulet	Applicant amended Claim 1
May 2, 2016 Election Requirement		Applicant elected Claims 1-7, 9-14, and 18-23
Sept 6, 2016	Rejected under 103(a) over	Applicant

In passing, Applicant notes that, in Applicant's August 26, 2015 response to the first Office Action, Applicant corrected the typographical error in Claim 1 that

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is discussed herein. As a result, any third party reviewing Applicant's application file history after that August 26, 2015 amendment would confirm their existing understanding about that typographical mistake. In that regard, below is Applicant's amendment of Claim 1 filed on August 26, 2015, including the correction as highlighted:

Please amend the claims as follows:

1. (Currently Amended) ~~An improved telepole device~~ Apparatus for cleaning swimming pools and similar bodies of water, comprising including:

an outer tube element having first and second ends, said first end of the outer tube element having a collar element associated therewith, said collar element containing a selectively actuatable detent means, said second end of said outer tube having structure for removably attaching a tool;

an inner tube element having first and second ends, said first end of the inner tube having attachment means a grip for a user to grasp and manipulate the apparatus removably attaching a tool;

said second end of said inner tube element being received in the first end of the outer tube through an opening in said collar element;

wherein said inner tube element is configured to readily slide within said outer tube element to a selected position ~~along the length of~~ relative to the outer tube, and wherein said detent means is configured to temporarily lock the said inner tube in that selected position within the said outer tube.

130. Plaintiff's "corrected" Claim 1 (as discussed above and as filed as Claim 53 in Plaintiff's foregoing October 9, 2019 Patent Office filing) is shown below as a true and correct copy of how Plaintiff filed that claim in that October 9, 2019 Patent Office filing:

53. (New) An improved telepole device, comprising:

an outer tube element having first and second ends, said first end of the outer tube element having a collar element associated therewith, said collar element containing a detent means, said second end of the outer tube having attachment means for removably attaching a tool;

an inner tube element having first and second ends;

said second end of said inner tube element being received in the first end of the outer tube through an opening in said collar element;

wherein said inner tube element is configured to readily slide within said outer tube element to a selected position along the length of the outer tube, and wherein said detent means is configured to temporarily lock the inner tube in that selected position within the outer tube.

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[HTTPS://D.DOCX.LIVE.NET/365D5D3A528D96FC/CLIENTS/RESHP/3841.4_USPA_POLE_CONT_3841.1/PTO COMMUNICATIONS/2019-04-01_OA/2019-10-06_SUPPL_RESPONSE/2019_10_18_2D_SUPPL_RESP_2019_04_01_OA_FINAL.DOCX](https://d.docs.live.net/365d5d3a528d96fc/clients/RESHP/3841.4_USPA_POLE_CONT_3841.1/PTO%20COMMUNICATIONS/2019-04-01_OA/2019-10-06_SUPPL_RESPONSE/2019_10_18_2D_SUPPL_RESP_2019_04_01_OA_FINAL.DOCX)

131. That "corrected" Claim 1 (as published; corrected as Claim 53 in Plaintiff's foregoing October 9, 2019 Patent Office filing) was issued in Plaintiff's '852 Patent as Claim 21. A true and correct copy of that issued Claim 21 is set forth here:

US 11,141,852 B2

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tube having a plurality of detent holes positioned to be engaged with said actuatable detent of said intermediate tube's collar;

said intermediate tube configured to slide within said outer tube to a selectable position relative to said outer tube, at which position said detent of said outer tube is configured to temporarily engage and hold said intermediate tube; and

said inner tube configured to slide within said intermediate tube to a selectable position relative to said intermediate tube, at which position said detent of said intermediate tube is configured to temporarily engage and hold said inner tube.

21. An improved telepole device, comprising:

an outer tube element having first and second ends, said first end of the outer tube element having a collar element associated therewith, said collar element containing a detent means, said second end of the outer tube having attachment means for removably attaching a tool;

an inner tube element having first and second ends; said second end of said inner tube element being received in the first end of the outer tube through an opening in said collar element;

wherein said inner tube element is configured to readily slide within said outer tube element to a selected position along the length of the outer tube, and wherein said detent means is configured to temporarily lock the inner tube in that selected position within the outer tube.

132. As required for an award of “pre-issuance/provisional” damages, issued Claim 21 above is at the very least “substantially identical” to Claim 1 as published by the Patent Office in December 2013. Within both the letter and the spirit of 35 U.S.C. 154(d), the Court should award to Plaintiff pre-issuance damages for Defendants’ infringement occurring prior to actual issuance of the ‘852 patent.

133. Thus, the Patent Office published in 2013 a Claim 1 and subsequently issued that claim in “substantially identical” form, as Claim 21 in Plaintiff’s ‘852

Patent.

134. The “substantially identical” requirement for pre-issuance damages is also further met (for an additional one of Plaintiff’s ‘852 Patent claims) by the Patent Office’s second publication of Plaintiff’s claims (in January 2018). Specifically, in January 2018 the Patent Office published (among other claims) a Claim 33. That Claim 33 subsequently issued as “substantially identical” Claim 1 in Plaintiff’s ‘852 Patent. Below is a table illustrating the very few differences in the claim language, and that those differences are so minor that the claims already are “substantially identical.” The yellow highlighting below shows the differences, and therefore that the vast majority of the claims is **identical**. Those differences are not material to any issues with respect to either (a) the validity of the claims (both forms of the claim would be valid) and/or (b) infringement of the claim by Defendants (Defendants’ poles infringe either and/or both forms of the claims):

<i>CLAIMS PUBLISHED 2018-01</i>	<i>ALLOWABLE CLAIMS 2021-06</i>
33. A telescoping pole apparatus, including:	33. An elongated telescoping pole apparatus, including:
an outer tube and an inner tube configured and sized to be slidable within said outer tube, said inner and outer tubes keyed to prevent relative rotation of the tubes with respect to each other around a central longitudinal axis through the tubes;	an elongated outer tube; an elongated inner tube configured and sized to be slidable within said outer tube; said inner and outer tubes keyed to prevent relative rotation of the tubes with respect to each other around a central longitudinal axis through the tubes;

<i>CLAIMS PUBLISHED 2018-01</i>	<i>ALLOWABLE CLAIMS 2021-06</i>
said outer tube having first and second ends, said first end of said outer tube having a selectively actuatable detent configured to engage said inner tube at a selected position along the length of said inner tube, said second end of said outer tube having structure for removably attaching a tool;	said outer tube having first and second ends, said first end of said outer tube having a selectively actuatable detent configured to engage said inner tube at a selected position along the length of said inner tube, said second end of said outer tube having structure for removably attaching a tool;
said inner tube having first and second ends, said first end being received in said slidable relationship within said outer tube, said second end having a grip attached thereto, said selective sliding action of the tubes causing the respective distance between said grip on said inner tube and said actuatable detent on said first end of said outer tube to change.	said inner tube having first and second ends, said first end being received in said slidable relationship within said outer tube, said second end having a grip attached thereto, said selective sliding action of the tubes causing the respective distance between said grip on said inner tube and said actuatable detent on said first end of said outer tube to change;
	the lengths of said outer and inner tubes when engaged with each other being sufficient to permit a user gripping said first end of said inner tube to manipulate the swimming pool cleaning tool at the second end of said outer tube against the bottom of a swimming pool while the user is standing on the side of the pool.

135. Still other facts support the award to Plaintiff of enhanced damages, attorneys fee, and pre-issuance damages. In mid-2021, the Patent Office Appeal Board ruled in Plaintiff's favor regarding both of Plaintiff's then-pending further pole applications.²⁶ Upon learning of those favorable rulings, rather than waiting

²⁶ One of those applications issued in October 2021, as Plaintiff's '852 Patent (the patent upon which this lawsuit is focused). The Patent Office issued the other

1 to “surprise” Defendants with those patents after the patents issued, Plaintiff began
2 efforts to try to reasonably resolve the related infringement issues between Plaintiff
3 and Defendants (and other of the known infringers) many weeks before those two
4 patents issued. Among other things, Plaintiff wrote to alert Defendants about the
5 upcoming issuance of those patents, and invited settlement negotiations.
6 Defendants’ actions in response to Plaintiff’s settlement efforts are further
7 evidence supporting the additional awards of relief that the Court should make to
8 Plaintiff and against Defendants.

9 136. Defendants’ responses followed the same pattern that Defendants had
10 adopted in the parties’ 2018 lawsuit discussed above. For context, in the lead-up to
11 the 2018 lawsuit, when Plaintiff’s principal Eric Resh confronted Defendants at the
12 January 2018 trade show, Defendants told Mr. Resh (among other things) that the
13 ‘458 Patent was invalid. When Plaintiff quickly sued Defendants, they never
14 produced any evidence of invalidity of the ‘458 Patent. Instead, they removed the
15 water channel feature so as to avoid infringing Plaintiff’s ‘458 Patent.

16 137. Similarly, when Plaintiff wrote to Defendants in 2021 about the
17 upcoming issuance of Plaintiff’s ‘798 and ‘852 Patents, Defendants first addressed
18 the ‘798 Patent (that the Patent Office scheduled to issue first), by alleging without
19 any support²⁷ that prior art existed that would invalidate the ‘798 Patent. As the
20 issue date drew nearer and Plaintiff remained unpersuaded by Defendants’
21 allegations, Defendants (a) flooded the market with infringing poles, each having
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23 application to Plaintiff a few weeks earlier (in August 2021) as Plaintiff’s
24 aforementioned ‘798 Patent (with claims primarily directed to multiple sets of tool
attachment holes).

25 ²⁷ Defendants did provide in letters unsupported “oral testimony” about
26 alleged prior art (concerning multiple sets of attachment holes on a telescoping
27 pole, a main focus of the ‘798 patent). As discussed in a separate section below,
28 such oral testimony about alleged prior art is so untrustworthy that the Supreme
Court and other courts have developed a black-letter rule holding that such
evidence is insufficient as a matter of law.

1 the infringing ‘798 Patent’s multiple attachment holes, and (b) advised that
 2 Defendants were going to change all poles that they made and shipped after the
 3 ‘798 Patent issued, to remove that feature.²⁸ Again, as with the 2018 lawsuit,
 4 Defendants (a) alleged that Plaintiff’s patent was invalid, (b) failed to present any
 5 evidence to support such alleged invalidity, and (c) then removed the infringing
 6 feature.

7 138. Defendants’ tactics in the present dispute regarding Plaintiff’s current
 8 ‘852 Patent lawsuit are virtually identical (although there are some slight
 9 differences in timing). Despite having years of opportunity to find any invalidating
 10 prior art, and months of notice of the upcoming issuance of Plaintiff’s ‘852 Patent,
 11 Defendants waited until after the ‘852 Patent issued to provide Plaintiff with any
 12 defense to those charges of infringement. To this date, Defendants have never
 13 even argued that their poles do not infringe. However, almost a week after the
 14 ‘852 Patent issued, Defendants finally dragged out their old standby tactic:
 15 alleging unsupported oral testimony about alleged prior art that invalidates
 16 Plaintiff’s ‘852 Patent.²⁹ Perhaps Defendants will end up repeating their standard
 17 modus operandi (and eventually stop infringing, as they did with Plaintiff’s ‘458
 18 and ‘798 Patents), but to date Defendants have refused Plaintiff’s demands in that
 19 regard.

20 139. Analyzing the relevant factors and the facts outlined above and that
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22 ²⁸ Plaintiff continues to consider suing Defendants for at least pre-issuance
 23 damages and/or injunctive relief for that infringement. However, that ‘798 Patent
 24 dispute involves a different patent and a different set of infringing products, among
 25 other things, so Plaintiff is not including it within the present Complaint.

26 ²⁹ Plaintiff includes additional and more detailed allegations regarding this
 27 “A.G. Pro Pole” that allegedly was made and sold more than 20 years ago in the Los
 28 Angeles area (where Defendants and Plaintiff were and are actively involved in the
 swimming pool pole business). Defendants also alleged some other minor issues
 as possible defenses, and Defendants may assert those within this lawsuit, but as
 presently advised, none of those other points are meritorious and Plaintiff will
 address them if and when Defendants raise them.

1 Plaintiff will show at trial, the Court should award to Plaintiff (a) enhanced
 2 damages, (b) reasonable attorney's fees, and (c) "provisional damages" (the latter
 3 is for Defendants' infringement prior to issuance of Plaintiff's '852 Patent).

4 **DEFENDANTS' ALLEGED EVIDENCE OF PRIOR ART "A.G. PRO**
 5 **POLE" IS INSUFFICIENT AS A MATTER OF LAW**

6 140. Resh realleges and incorporates by reference the allegations set forth
 7 in paragraphs 1-147.

8 141. As noted above, Defendants very recently, and for the first time,
 9 actually alleged specific prior art to try to invalidate Plaintiff's '852 Patent.³⁰ As
 10 discussed below, Defendants made their allegations with only unsupported oral
 11 testimonial evidence. As also set forth below, that evidence is insufficient as a
 12 matter of law to support an allegation of prior art.

13 142. When Plaintiff asked Defendants for any evidence beyond that
 14 unsupported oral testimony, Defendants indicated that Defendants have further
 15 relevant information and/or evidence regarding that alleged prior art, but said that
 16 Defendants are not willing to share that further information with Plaintiff. As a
 17 consequence, Plaintiff is left to file this lawsuit, and use the Court and legal
 18 processes such as discovery to obtain whatever further information or evidence
 19 Defendants or third parties may have regarding Defendants' alleged prior art. If
 20 Defendants instead had provided to Plaintiff their alleged "further evidence" about
 21 the "prior art," this lawsuit may not have been necessary. This behavior by
 22 Defendants is, by itself, a factor supporting the Court's award to Plaintiff of
 23 attorney fees and/or other relief.

24
 25 ³⁰ As noted above, in addition to Defendants' apparently "main" allegation of
 26 invalidity based on the alleged "A.G. Pro Pole" (discussed herein), Defendants
 27 have alleged a short list of other potential defenses, none of which appear to be of
 28 much potential consequence. Those alleged defenses are such that Defendants
 may not even include them as defenses in this lawsuit, but if Defendants do,
 Plaintiff will address them at that time.

1 143. Plaintiff now alleges and sets forth further details regarding
2 Defendants' very recent prior art allegations. As noted above, Defendants have
3 been aware of Plaintiff's '852 Patent inventions for at least approximately 10
4 years. During all of those years, until just a few months ago, Defendants (just like
5 everyone else) had never mentioned any allegedly invalidating prior art regarding
6 Plaintiff's pole inventions.

7 144. After Plaintiff's '852 Patent issued, and months after Plaintiff had
8 alerted Defendants that the Patent Office was going to issue the '852 Patent,
9 Defendants first mentioned something Defendants have called the "A.G. Pro Pole".

10 145. Upon receiving that allegation from Defendants, Plaintiff immediately
11 and repeatedly requested all information or evidence Defendants have regarding
12 that "A.G. Pro Pole." Among other things, Plaintiff wanted to make a good faith
13 determination as to (a) whether that pole actually existed at any point in time prior
14 to the filing date of Plaintiff's '852 patent, and (b) if so, the activities in which that
15 pole was involved. In short, Plaintiff repeatedly requested that information, and
16 although Defendants provided Plaintiff an opportunity to "inspect" that pole,
17 Defendants did not provide any supporting evidence regarding the pole being
18 "prior art," other than "oral testimony" that is legally insufficient as a matter of
19 law, as explained below.

20 146. Broadly, based on the limited information that Defendants have
21 provided to Plaintiff, Defendants assert that the "A.G. Pro Pole" existed circa 2000
22 (more than 20 years ago), that it was publicly used and/or on sale within a period
23 of approximately two years, and that it constitutes prior art that invalidates
24 Plaintiff's '852 Patent. As further explained herein, Plaintiff is unpersuaded that
25 Defendants' "A.G. Pro Pole" actually constitutes prior art with respect to
26 Plaintiff's inventions. Plaintiff's doubt about the credibility of Defendants'
27 allegations is based on many things (including ones discussed herein). Perhaps the
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1 most glaring of these reasons is Defendants' refusal to share their alleged "prior
2 use/sale evidence" more completely or confidently. In any case, because of
3 Defendants' refusals to be more forthcoming, Plaintiff is not currently able to
4 reasonably further investigate the credibility of Defendants' allegations.

5 147. Based on the "evidence" Defendants have provided to Plaintiff,
6 Defendants' main allegation relies virtually exclusively on oral testimony from
7 one single person. That single witness is an alleged third-party pool man named
8 Ray Leduc, who apparently alleges that he made prior use/sale of Plaintiff's
9 inventions, more than 20 years ago (more than 10 years before Plaintiff's relevant
10 filing date).

11 148. More specifically, Defendants have "shown" (but refused to give) to
12 Plaintiff a single declaration of that one witness, Mr. Leduc. As also mentioned
13 herein, Defendants have alleged orally that they have "further evidence," but to
14 date Defendants have refused to provide any of that "further evidence" to Plaintiff.

15 149. As explained below, Defendants' allegations and single witness' oral
16 testimony are insufficient as a matter of law to establish invalidating prior art
17 public use. According to the United States Supreme Court,³¹ Defendants' tactic
18 has been very common since near the very beginning of our patent system. That
19 "tactic" generally is as follows: in an effort to invalidate a patent, infringers
20 commonly present one or more witnesses' oral testimony about prior use/sale
21 events that allegedly happened long ago, such as 20 or more years prior to the
22 invention/patent and/or the dispute about the specific patent. Such "old oral prior
23 art" tactics have not been well received by the courts. In fact, those tactics have
24 resulted in the courts establishing a black-letter rule of law: such infringers are

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26 ³¹ See discussion below regarding *The Barbed Wire Patent* Supreme Court
27 decision from 1892. The Supreme Court issued that decision 130 years ago, noting
28 that even by that time, this tactic (alleging oral testimony of long-ago prior use of
an invention) was a commonplace by patent infringers.

1 required to present sufficient corroboration, independent of the oral testimony, in
2 order for the evidence to be persuasive. Said another way, without such
3 corroboration, such “oral testimony” evidence is insufficient to invalidate a patent.

4 150. In the current case, Defendants have not provided the required
5 corroborating evidence. In a section further below, Plaintiff details the “evidence”
6 that Defendants have provided, and the strange/limited/dubious way in which
7 Defendants have provided it.

8 151. First, however, to provide a frame of reference for (a) how
9 commonplace this tactic is by infringers, and (b) courts’ alertness to and hesitancy
10 to fall for such tactics, Plaintiff extensively discusses here a Supreme Court
11 decision from 1892 dealing with such tactics/allegations. Following that
12 discussion, and to show that this tactic is still in use by patent infringers (and still
13 not welcomed by the courts), Plaintiff discusses in some detail a more recent 1999
14 Federal Circuit decision (that cites extensively to the Supreme Court’s 1892
15 decision).

16 **The Supreme Court’s 1892 “Corroboration Requirement”**

17 152. One hundred and thirty years ago, in *The Barbed Wire Patent*, 143
18 U.S. 275, at 284-85, 12 S.Ct. 443, at 447 (1892), the Supreme Court dealt with
19 patent infringers’ commonplace tactic of alleging “prior use” of the patented
20 invention. In that *Barbed Wire Patent* case, several infringing fence sellers argued
21 that the barbed wire patent was invalid because (among other things), several
22 decades earlier (and before the inventor applied for a patent) **the invention**
23 **allegedly had already been in use** by other barbed-wire producers. This is
24 exactly what the current infringers Conrads/Skimlite apparently are attempting to
25 do (with their Leduc declaration regarding an alleged “A.G. Pro Pole” allegedly in
26 use several decades ago): they are presenting oral testimony about long-ago
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1 activities, to allege that Plaintiff's pole inventions were already in use and on sale
2 before Plaintiff's application.

3 153. It is informative to review (a) the evidence that the Supreme Court
4 considered in the 1892 Barbed Wire Patent lawsuit, and (b) the comments the
5 Supreme Court made in ruling that the evidence was not sufficient. According to
6 the Supreme Court, The Barbed Wire Patent infringers submitted "... testimony ...
7 tend[ing] to show the existence, public exhibition, and use of a number of [alleged
8 prior art] fences prior to the date of the [patent] application..."

9 154. By way of comparison, and as more fully discussed below, the
10 evidence submitted by The Barbed Wire Patent infringers in 1892 was much more
11 substantial than the single witness submitted by current infringers
12 Conrads/Skimlite allegations regarding the single alleged prior art "A.G. Pro Pole."
13 In contrast to the current infringers' sole Leduc declaration, The Barbed Wire
14 Patent infringers submitted evidence of a number of alleged prior art fences, and
15 included twenty-four sworn witnesses regarding the alleged prior use of one of
16 those fences, an alleged prior art "Morley Fence." Also in contrast to the current
17 infringers' Leduc declaration, those Barbed Wire Patent witnesses were cross-
18 examined by the patent owner (in the current status of the present case, Defendants
19 Conrads/Skimlite will not even allow Plaintiff to have a copy of the Leduc
20 declaration!).

21 155. As explained below, the Barbed Wire Patent case's numerous prior art
22 fences and twenty-four witnesses were not enough to invalidate the barbed wire
23 patent in 1892 – the Supreme Court held that Defendants' evidence did not
24 invalidate that patent. Below is a further description of at least some of that
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1 Barbed Wire Patent evidence held insufficient by the Supreme Court.³² Plaintiff
 2 submits that this detailed description will (a) even more clearly highlight the
 3 deficiencies in Defendants' current "evidence" regarding the "A.G. Pro Pole," and
 4 (b) underscore how important it is in these situations to focus on the details of the
 5 evidence Defendants are offering as alleged prior art.

6 156. The patent application that was litigated in The Barbed Wire Patent
 7 case was filed in 1873. In the subsequent lawsuit many years later, the 24
 8 witnesses gave the following sworn testimony:

- 9 • that a panel of [the alleged prior art "Morley"] fence appears to have been
 10 exhibited at a county fair in Delaware County, Iowa at Delhi, in 1858 and 1859;
- 11 • that at the time the fair was being held at Delhi [Iowa] in 1858 and 1859,
 12 Morley came to the house of one Dubois, a farmer living in Delaware County,
 13 having with him a piece of fence wire which had short pieces of wire wound
 14 around it;
- 15 • that Morley remained with him that night; that the next day he saw a panel
 16 of fence on the fairground exhibited by Morley, made by stretching wires from a
 17 tree or post to another post, and that the wire so used was the same or similar to
 that previously shown him by Morley;
- 18 • One Bates, a blacksmith, swore that he aided Morley in putting up the panel
 19 of fence exhibited by him. He described the way the barbs were coiled around
 20 the fence wire, testifying that he made the tools with which the short wires were
 21 twisted around the fence wire, and describing the tools, and also that he
 22 afterwards made a pair of shears for Morley to be used in cutting the wire into
 pieces suitable for barbs;
- 23 • One Robinson, who acted as deputy marshal at the fair, testified that he rode
 24 a gray horse, and, having occasion to leave him, hitched him to a fence post in
 25 the fair-grounds, and on his return found his nose and breast bloody, caused by a
 cut on his lip, and on examination found that the wires attached to the post had

26 ³² This description of the 24 witnesses' testimony here is either exactly
 27 quoted from, or very closely based on, the Supreme Court's *Barbed Wire Patent*
 28 opinion.

1 swags or barbs thereon, formed by coiling a short piece of wire around the fence
2 wire;

3 • He also testified that in 1857, he was engaged in work on the railroad
4 through Delaware County near which Morley had a piece of land; that Morley
5 was frequently where witness was working, and tried to sell the land to him for a
6 pair of mules, and that he had with him a piece of wire with swags on it, which
7 he exhibited to witness, saying he was going to get it patented;

8 • There was other testimony to the effect that a boy, in playing with other boys
9 on the fairgrounds, was thrown against the panel of fence and received two cuts,
10 caused by the wires twisted upon the wire fence, which bled freely, and the scars
11 of which were still visible upon his face;

12 • One Potter testified that he attended the fair and saw Morley there; that he
13 exhibited a panel of fence made of wires strung between a tree and a post with
14 barbs made of short wires twisted around the plain wire; that Morley gave him a
15 piece of the wire with barbs on it; that he took it home with him; that he and his
16 wife talked about it, and its effect upon stock; that he had the specimen of the
17 wire in his summer kitchen for a year or more, and then put it in an old trunk in
18 which he kept various relics and keepsakes; that it had remained there, and was
19 there still, and then, on request of defendants' counsel, witness went to his
20 home, brought the specimen of wire before the notary, and made it an exhibit in
21 the case. It consists of a short piece of plain fence wire with two barbs on it,
22 made by twisting other pieces of wire transversely around the fence wire;

23 • One Harrington also testified that he attended the fair; that he saw the panel
24 of fence made of wire situated between a small tree and post and there were
25 barbs on it made of short wires twisted around the fence wire; that his attention
26 was attracted to it by efforts that were made to drive a bull upon it, and that he
27 examined the wire, and noticed its construction.

28 • According to the recollection of some of the witnesses, it was made of three
or four strands of single wire, on which the barbs were fastened, the wires being
attached at their ends to posts in the ground, or to a post and a tree, and that the
top wire had barbs on it formed of short pieces of wire wrapped around it, some
say once, others twice, and still others three times. The other two or three strands
of single wire were without barbs. Beneath the top barbed wire was a board to
attract the attention of the cattle, either secured to the posts or suspended by a
wire from the top wire strand. This fence was put up on the second day of the
fair, and exhibited one day, as it appears the fair continued but two days. No one

1 seems to know what became of the panel nor of the barbed wire upon it. It was
2 never seen after the fair beyond the single piece produced by the witness Potter;

- 3 • It further appeared that in 1866, Morley took out a patent for a triangular
4 cattle pen built of posts and boards supported upon wheels, so constructed that it
5 could be moved by the animal inside of it. Some seven or eight witnesses
6 testified that at different times when they saw this machine, it had on it one or
7 more strands of fence wire with barbs or pricklers on them, put on in the same
8 manner as were the barbs on the Delhi fair exhibit, and the whole strung on the
9 top of the posts above the boards;
- 10 • Other witnesses testified to seeing fences upon farms owned or occupied by
11 Morley, and in a yard near his mill, over which strands of barbed wire were
12 stretched in the same manner as in the Delhi fence;
- 13 • After discussing some of Defendants' evidence regarding other allegedly
14 prior art fences, the Court stated that, "There was a vast amount of [additional]
15 testimony of similar character tending to show the use of coiled barbs upon
16 [other] fence wires which it would serve no good purpose to discuss in detail."

17 157. The Supreme Court analyzed the foregoing infringers' evidence
18 (regarding the alleged prior art Morley fence), and held that the evidence was
19 **insufficient**:

20 "Even conceding that Morley did exhibit a wire fence armed
21 with barbs at the Delhi county fair, we do not think the testimony
22 connected with this fence makes out a case of prior use of the device
23 patented by Glidden, for the following reasons:

24 First. While the fence may have been armed with barbs,
25 there is very little if anything to show that it was constructed
26 according to the design of the Glidden fence. Indeed, after the
27 lapse of twenty-five years, it would in the nature of things be
28 highly improbable that any witness who saw this fence for the
single day it was exhibited there would be able to describe it
accurately.

Second. If Morley had regarded this fence as of any
value, he would have applied for a patent upon it, since he did
in fact obtain a patent for his traveling pen, which appears to

1 have been a comparatively worthless contrivance. If this pen
2 had been armed with a barbed wire, it is somewhat singular that
3 no allusion was made to it in the drawings or specification.

4 Third. The testimony of Potter that he preserved a piece
5 of wire given to him by Morley in a trunk containing some old
6 relies for over twenty-five years is not only contradicted by his
7 son, who was familiar with the trunk, had examined its
8 contents, and testified that he had never seen the wire there, but
9 is improbable upon its face.

10 Fourth. If any experiments were made by Morley in this
11 direction, they were evidently looked upon by him and by the
12 public as of no practical value, and were subsequently
13 abandoned, and the fences lost.

14 “While we think the testimony goes far to establish the fact that
15 Morley exhibited a wire fence at this fair, and perhaps also used it
16 upon his farm at about the date claimed, we are far from being
17 satisfied that it was the Glidden device, or so near an approximation to
18 it as to justify us in holding that it was an anticipation.”

19 (Emphasis added).

20 158. In its *Barbed Wire Patent* decision in 1892, the Supreme Court also
21 noted the commonplace nature of the problem “with certain unpatented devices
22 claimed to be complete anticipations of [a] patent, the existence and use of which
23 are proven only by oral testimony.” The Supreme Court articulated some related
24 general principles, including “that [such evidence must] be subjected to the
25 closest scrutiny” because of “the frequency with which testimony is tortured,
26 or fabricated outright”:

27 “In view of the unsatisfactory character of such testimony,
28 arising from the forgetfulness of witnesses, their liability to mistakes,
their proneness to recollect things as the party calling them would
have them recollect them, aside from the temptation to actual
perjury, courts have not only imposed upon defendants the burden of
proving such devices, but have required that the proof shall be

1 clear, satisfactory and beyond a reasonable doubt. Witnesses
 2 whose memories are prodded by the eagerness of interested parties to
 3 elicit testimony favorable to themselves are not usually to be
 4 depended upon for accurate information. The very fact, which courts
 5 as well as the public have not failed to recognize, that almost every
 6 important patent, from the cotton gin of Whitney to the one under
 7 consideration, has been attacked by the testimony of witnesses
 8 who imagined they had made similar discoveries long before the
 9 patentee had claimed to have invented his device, has tended to throw
 10 a certain amount of discredit upon all that class of evidence, and to
 11 demand that it be subjected to the closest scrutiny. Indeed, the
 12 frequency with which testimony is tortured, or fabricated
 13 outright, to build up the defense of a prior use of the thing patented,
 14 goes far to justify the popular impression that the inventor may be
 15 treated as the lawful prey of the infringer. The doctrine was laid down
 16 by this court in *Coffin v. Ogden*, 18 Wall. 120, 124 [21 L.Ed. 821, 85
 17 U.S. 120 (1873)], that:

13 “the burden of proof rests upon him, the
 14 defendant, and every reasonable doubt should be
 15 resolved against him. If the thing were embryotic or
 16 inchoate; if it rested in speculation or experiment; if the
 17 process pursued for its development had failed to reach the
 18 point of consummation, it cannot avail to defeat a patent
 19 founded upon a discovery or invention which was
 20 completed, while in the other case there was only progress,
 21 however near that progress may have approximated to the
 22 end in view.”

20 (Emphasis added).

21 159. Finally, and as noted above, the Supreme Court held that the
 22 foregoing oral/other testimony did not invalidate the Barbed Wire Patent,
 23 concluding (in language that appears to likewise apply to Plaintiff’s inventions and
 24 the great public reception and copying by competitors of Plaintiff’s inventions):

25
 26 “...There was evidently, prior to [the patentee] Glidden’s
 27 application, more or less experimenting in a rude way, in or about
 28 Delaware county, upon the subject of barbed wires as applied to wire

1 fences, and we think it is quite probable that coiled barbs were affixed
 2 to single wires before the Glidden application was made. We are not
 3 satisfied, however, that he was not the originator of the combination
 4 claimed by him of the coiled barb, locked and held in place by the
 5 intertwined wire. It is possible that we are mistaken in this; that some
 6 one of these experimenters may have, in a crude way, hit upon the
 7 exact device patented by Glidden, although we are not satisfied from
 8 this testimony whether or by whom it was done. It is quite evident too
 9 that all or nearly all these experiments were subsequently abandoned.
 10 But it was Glidden beyond question who first published this
 11 device, put it upon record, made use of it for a practical purpose,
 12 and gave it to the public, by which it was eagerly seized upon and
 13 spread until there is scarcely a cattle-raising district in the world in
 14 which it is not extensively employed. Under these circumstances, we
 15 think the doubts we entertain concerning the actual inventor of this
 16 device should be resolved in favor of the patentee.”

17 (Emphasis added).

18 160. The record in this application and its parent applications/prosecutions
 19 show that, like the patentee in *The Barbed Wire Patent*, Plaintiff was the first to
 20 have “published this [current pool pole] device, put it upon record, made use
 21 of it for a practical purpose, and gave it to the public, by which it was eagerly
 22 seized upon and spread...”

23 161. Thus, the Conrads/Skimlite infringers’ tactic of “old public use”
 24 evidence has been plaguing patent law for hundreds of years. As further discussed
 25 herein, that abusive tactic has led to an absolute requirement that such testimony be
 26 sufficiently corroborated. In the present situation, and as explained further
 27 below, the Conrads/Skimlite infringers have not provided any corroboration to
 28 establish any relevant activity (by Mr. Leduc or anyone). Mr. Leduc’s “oral
 testimony” declaration is the only evidence Defendants have presented. The
 documents attached to Mr. Leduc’s declaration have to do with existing generic
 and commercially available things, not having anything to do with combining

1 those things in any manner, let alone to make Plaintiff's inventions. Those generic
2 things include:

3 (a) pool pole replacement parts (grips and aluminum adapters for all-
4 fiberglass twist-lock poles), things that any pool man might have; and

5 (b) painters poles (painters poles that Plaintiff already made of record
6 in prosecuting Plaintiff's '852 patent, over which the Patent Office granted
7 Plaintiff's '852 patent).
8

9 Again, the Conrads/Skimlite infringers have not presented any corroborating
10 evidence of Mr. Leduc or anyone combining those generic things at any point in
11 time that would qualify as prior art with respect to Plaintiff's inventions.

12 **The Federal Circuit's Related 1999 "Corroboration Requirement" in**
13 **Finnigan Corp.: "Oral Testimony is Peculiarly UNTRUSTWORTHY"**

14 162. Since that 1892 Supreme Court *The Barbed Wire Patent* case,
15 additional court decisions have extensively discussed the high threshold for
16 corroboration of oral testimony about alleged "prior use" of a patented invention.
17 One such case is *Finnigan Corp. v. Int'l Trade Comm'n*, 180 F. 3d 1354 (Fed. Cir.
18 1999), a case that is perhaps even more factually similar to the present infringers'
19 alleged "A.G. Pro Pole" prior art. In *Finnigan*, the Federal Circuit cited the
20 Supreme Court's *The Barbed Wire Patent* decision extensively, and relied upon the
21 principles from the Supreme Court to again find that the "oral testimony" of
22 invalidating prior art was not sufficient.

23 163. To permit convenient comparison of the present "A.G. Pro Pole"
24 allegations with the facts of the Federal Circuit's *Finnigan* decision, Plaintiff
25 quotes and highlights *Finnigan* at length below:
26

27 As we have had occasion before to observe, oral testimony,
28 unsupported by patents or exhibits, tending to show prior use of a

1 device regularly patented, is, in the nature of the case, open to grave
2 suspicion. *The Barbed Wire Patent*, 143 U.S. 275, 12 S.Ct. 443, 36
3 L.Ed. 154 [(1892)]. Granting the witnesses to be of the highest
4 character, and never so conscientious in their desire to tell only the
5 truth, the possibility of their being mistaken as to the exact device
6 used, which, though bearing a general resemblance to the one
7 patented, may differ from it in the very particular which makes it
8 patentable, is such as to **render oral testimony peculiarly**
9 **untrustworthy; particularly so if the testimony be taken after the**
10 **lapse of years from the time the alleged anticipating device was**
11 **used.** If there be added to this a personal bias, or an incentive to color
12 the testimony in the interest of the party calling the witness, to say
13 nothing of downright perjury, its value is, of course, still more
14 seriously impaired.

15 ...

16 The law has long looked with disfavor upon invalidating
17 patents on the basis of mere testimonial evidence absent other
18 evidence that corroborates that testimony. The Supreme Court
19 recognized over one hundred years ago that testimony concerning
20 invalidating activities can be “unsatisfactory” due to “the
21 forgetfulness of witnesses, their liability to mistakes, their proneness
22 to recollect things as the party calling them would have them recollect
23 them, aside from the temptation to actual perjury.” *The Barbed Wire*
24 *Patent*, 143 U.S. 275, 284, 12 S.Ct. 443, 36 L.Ed. 154 (1891).
25 Accordingly, “[w]itnesses whose memories are prodded by the
26 eagerness of interested parties to elicit testimony favorable to
27 themselves are not usually to be depended upon for accurate
28 information,” and therefore such testimony rarely satisfies the burden
upon the interested party, usually the accused infringer, to prove
invalidity by clear and convincing evidence.

Mere testimony concerning invalidating activities is
received with further skepticism because such activities are
normally documented by tangible evidence such as devices,
schematics, or other materials that typically accompany the
inventive process. See *Woodland Trust v. Flowertree Nursery, Inc.*,
148 F.3d 1368, 1373, 47 USPQ2d 1363, 1367 (Fed.Cir.1998) (noting
that the skepticism with which mere testimony of invalidating activity
is received is “reinforced, in modern times, by the ubiquitous paper

1 trail of virtually all commercial activity. It is rare indeed that some
 2 physical record (e.g., a written document such as notes, letters,
 3 invoices, notebooks, or a sketch or drawing or photograph showing
 4 the device, a model, or some other contemporaneous record) does not
 5 exist.”); *Eibel Process Co. v. Minnesota & Ontario Paper Co.*, 261
 6 U.S. 45, 60, 43 S.Ct. 322, 67 L.Ed. 523 (1923) (holding that the oral
 7 testimony of prior public use “falls short of being enough to overcome
 8 the presumption of novelty from the granting of the patent” when
 9 “there is not a single written record, letter or specification of prior
 10 date to [the patentee’s] application that discloses any such discovery
 11 by anyone....”).

12 While this court has in the past applied the requirement of
 13 corroboration more often in the context of priority disputes under 35
 14 U.S.C. § 102(g), [fn. omitted] corroboration has been required to
 15 prove invalidity under other subsections of § 102 as well. [fn.
 16 omitted] In the context of § 102(f) (derivation) and § 102(g) (priority),
 17 we have stated that “the case law is unequivocal that an inventor’s
 18 testimony respecting facts surrounding a claim of derivation or
 19 priority of invention cannot, standing alone, rise to the level of clear
 20 and convincing proof.” *Price v. Symsek*, 988 F.2d 1187, 1194, 26
 21 USPQ2d 1031, 1036 (Fed.Cir.1993). No principled reason appears
 22 for applying a different rule when other subsections of § 102 are
 23 implicated: **a witness’s uncorroborated testimony is equally**
 24 **suspect as clear and convincing evidence if he testifies concerning**
 25 **the use of the invention in public before invention by the patentee**
 26 **(§ 102(a)), use of the invention in public one year before the**
 27 **patentee filed his patent (§ 102(b)), or invention before the**
 28 **patentee (§ 102(g)).**

...

22 Moreover, the need for corroboration exists regardless of
 23 whether the party testifying concerning the invalidating activity is
 24 interested in the outcome of the litigation (e.g., because that party is
 25 the accused infringer) or is uninterested but testifying on behalf of an
 26 interested party. That corroboration is required in the former
 27 circumstance cannot be debated. *See, e.g., Stevenson v. International*
 28 *Trade Comm’n*, 67 C.C.P.A. 109, 612 F.2d 546, 550, 204 USPQ 276,
 280 (CCPA 1979) (“Uncorroborated oral testimony of prior inventors
 or users with a demonstrated financial interest in the outcome of the

litigation is insufficient to provide such proof.”). Uninterested witnesses are also subject to the corroboration requirement. For example, in *Barbed Wire Patent*, some twenty-four witnesses, all apparently uninterested in the outcome of the case, testified on behalf of the accused infringer that they had seen the patented fence exhibited by a third party, Mr. Morley, at a county fair more than two years prior to the filing of the patent. *See Barbed Wire Patent*, 143 U.S. at 286-87. That the witnesses themselves were not interested did not immunize their testimony from the corroboration requirement. *See Barbed Wire*, 143 U.S. at 284 (“[w]itnesses whose memories are prodded by the eagerness of interested parties to elicit testimony favorable to themselves are not usually to be depended upon for accurate information.”) (emphasis added). It is not surprising that the cases have held that testimony concerning a witness’s own anticipatory activities must be corroborated. A witness who testifies to antedating the invention of the patent-in-suit can be expected to derive a sense of professional or personnel accomplishment in being the first in the field, and in this sense is not uninterested in the outcome of the litigation, even if that witness is not claiming entitlement to a patent. Of course, the need for corroboration takes on special force when an otherwise uninterested witness shows some reason to be biased in favor of the interested party.

...

In the final analysis, the Supreme Court has defined the necessity of corroboration not with reference to the level of interest of the testifying witness, but rather because of doubt that testimonial evidence alone in the special context of proving patent invalidity can meet the clear and convincing evidentiary standard to invalidate a patent.

...

See Woodland Trust, 148 F.3d ... at 1373, 47 USPQ2d at 1368 (“The relationship of the witnesses and the fact that the asserted prior uses ended twenty years before the trial, and were abandoned until the defendant reportedly learned of the patentee’s practices, underscore the failure of this oral evidence to provide clear and convincing evidence of prior knowledge and use.”). Cases like *Thomson* and *Woodland Trust* correctly recognized that the level of interest of the

1 testifying witness is an important consideration when such testimony
 2 is offered to corroborate another witness's testimony.

3 ...

4 2. Jefferts' Alleged Public Use

5 Jefferts' testimony that he used the claimed invention more than
 6 one year prior to the filing of the '884 patent was not corroborated by
 7 other evidence. The Jefferts' article simply does not corroborate his
 8 testimony because, as we have noted, that article is ambiguous at best
 9 concerning the claimed use of nonresonance ejection. Similarly, other
 10 testimony taken before the Commission was relevant only to whether
 11 Jefferts' experiments were sufficiently public to constitute public use.

12 ...

13 In this case, **the sole basis to support a determination of a**
 14 **prior public use was Jefferts' testimony concerning his own work;**
 15 **there was no evidence corroborative of this testimony at all...**

16 ...

17 In the end, what we are left with is Jefferts' testimony
 18 concerning his alleged public use. Such evidence is insufficient as a
 19 matter of law to establish invalidity of the patent. This is not a
 20 judgment that Jefferts testimony is incredible, but simply that such
 21 testimony alone cannot surmount the hurdle that the clear and
 22 convincing evidence standard imposes in proving patent invalidity.
 23 See Mahurkar v. C.R. Bard, Inc., 79 F.3d 1572, 1577, 38 USPQ2d
 24 1288, 1291 (Fed.Cir.1996) (noting that the corroboration rule,
 25 "provides a bright line for both district courts and the PTO to
 26 follow....").

27 *Finnigan Corp. v. Int'l Trade Comm'n*, 180 F. 3d 1354 (Fed. Cir. 1999)
 28 (emphasis added).

164. In many ways, the facts in the *Finnigan* case are very similar to those
 of the present "A.G. Pro Pole" situation. As further discussed below, the
 Conrads/Skimlite infringers' current declarant (Mr. Leduc) is providing oral
 testimony (via his declaration) about events that occurred **over two decades ago**

(years 2000-2002). He is making those oral allegations **without** corroboration. In addition, it seems at least possible that Mr. Leduc may have a friendship or acquaintance with Defendants Conrads/Skimlite or otherwise be biased in the interest of Defendants.³³ As discussed below (and as in the *Eibel* case cited above), Defendants Conrads/Skimlite have not produced “a single written record, letter or specification of prior date to [Plaintiff’s] application that discloses any such discovery by anyone.” Instead, the Leduc “corroborating evidence” consists of existing generic components that Mr. Leduc allegedly purchased (painters’ poles, and grips and aluminum adapters for all-fiberglass pool poles). Defendants have provided **no** evidence that Mr. Leduc (or anyone) actually assembled, publicly used, sold, or even offered for sale, the allegedly fully-assembled “A.G. Pro Pole” from those components. Thus, the current situation appears to fit squarely within those cases described above, involving “doubt that testimonial evidence alone in the special context of proving patent invalidity can meet the clear and convincing evidentiary standard to invalidate a patent.”

Examples of Other “Corroborating Evidence” Court Decisions

165. Below are excerpts from some of the many other decisions on this topic (of the burden on infringers to invalidate a patent based on alleged prior use). Some of these decisions were cited in the *Finnigan* decision above, and Plaintiff attempts here to provide at least some further relevant details, for purpose of comparison to the present “A.G. Pro Pole” allegations:

³³ Again, Applicant may have the opportunity to further explore these facts and evidence in any litigation between the parties. As discussed below, however, it seems clear that Mr. Leduc lived and worked near the Conrads for many years, north of Los Angeles, California. Perhaps more importantly, if Mr. Leduc were **not** acquainted with the Conrads, one is left to wonder how the Conrads were able to locate him and elicit his recent declaration.

- 1 • *Eibel Process Co. v. Minnesota & Ontario Paper Co.*, 261 U.S. 45, 60, 43
2 S.Ct. 322, 67 L.Ed. 523 (1923) (holding that the oral testimony of prior
3 public use “falls short of being enough to overcome the presumption of
4 novelty from the granting of the patent” when “**there is not a single written
5 record, letter or specification of prior date to [the patentee’s]
6 application that discloses any such discovery by anyone....** The oral
7 evidence on this point falls far short of being enough to overcome the
8 presumption of novelty from the granting of the patent. **The temptation to
9 remember in such cases and the ease with which honest witnesses can
10 convince themselves after many years of having had a conception at the
11 basis of a valuable patent, are well known in this branch of the law, and
12 have properly led to a rule that evidence to prove prior discovery must
13 be clear and satisfactory.”)**
- 14 • *Woodland Trust v. Flowertree Nursery, Inc.*, 148 F.3d 1368, 1371-1373, 47
15 USPQ2d 1363, 1367 (Fed.Cir.1998) (“**there is a very heavy burden to be
16 met by one challenging validity when the only evidence is the oral
17 testimony of interested persons and their friends,**³⁴ **particularly of long-
18 past events;**” noting that the skepticism with which mere testimony of
19 invalidating activity is received is “reinforced, in modern times, by the
20 ubiquitous paper trail of virtually all commercial activity. **It is rare indeed
21 that some physical record (e.g., a written document such as notes,
22 letters, invoices, notebooks, or a sketch or drawing or photograph
23 showing the device, a model, or some other contemporaneous record)
24 does not exist... The relationship of the witnesses and the fact that the
25 asserted prior uses ended twenty years before the trial, and were
26 abandoned until the defendant reportedly learned of the patentee’s
27 practices, underscore the failure of this oral evidence to provide clear
28 and convincing evidence of prior knowledge and use.”)**
- *Price v. Symsek*, 988 F.2d 1187, 1195, incl. at fn. 3 (Fed. Cir. 1993): “An
evaluation of all pertinent evidence must be made so that **a sound
determination of the credibility of the ... story** may be reached. The
factors bearing on that credibility which must be considered are unrelated
to the existence of the patent and include:
 - (1) **delay** between event and trial,
 - (2) **interest of witness,**

³⁴ See preceding footnote regarding likelihood that infringers Conrads/Skimlite are at least acquainted with declarant Ray Leduc.

- (3) contradiction or impeachment,
- (4) **corroboration**,
- (5) witnesses' familiarity with details of alleged prior structure,
- (6) improbability of prior use considering state of the art,
- (7) **impact of the invention on the industry**, and
- (8) **relationship between witness and alleged prior user.**³⁵

(Emphasis added).

**Defendants' "A.G. Pro Pole" Allegations Do Not Meet the Very High
"Corroboration Requirement" Burden of Proof for Such Alleged Prior
Use**

166. Within the foregoing legal framework of *The Barbed Wire Patent* and *Finnigan* decisions and related cases, Plaintiff now discusses Defendants' alleged "evidence" regarding the "A.G. Pro Pole." As mentioned above, in response to Plaintiff's pursuit of certain infringers of Plaintiff's recently-issued '852 patent, some of Defendants (the Conrads and their company, Skimplite) have recently alleged that an "A.G. Pro Pole" is invalidating prior art with respect to Plaintiff's '852 patent. As discussed below, those allegations do not appear (to Plaintiff) to be credible, and certainly not to be sufficient or persuasive in overcoming the foregoing high burden that Defendants are required to meet in order to invalidate Plaintiff's '852 Patent claims.

167. In addition to (and independently of) the actual deficient substance of the Conrads/Skimplite infringers' "A.G. Pro Pole" allegations, Defendants presented their allegations to Plaintiff in a very strange and even paranoid way. Defendants' actions were so strange that those actions themselves at least arguably cast doubt

³⁵ These *Price* factors, including especially the highlighted ones, seem directly applicable to Applicant's current pole inventions and the infringers' related "A.G. Pro Pole" "evidence."

1 on the credibility of Defendants’ “A.G. Pro Pole” allegations – it is as if
2 Defendants themselves do not believe the allegations.

3 168. Below are descriptions of (a) some of Defendants’ strange behavior
4 regarding their alleged “A.G. Pro Pole” prior art, and (b) the insufficient
5 “evidence” that Defendants have chosen to make available to Plaintiff.

6 169. Plaintiff has been in disputes with Conrads/Skimlite for several years
7 regarding Defendants’ infringing products. Plaintiff even sued Defendants and
8 forced them to change their poles (in 2018). As Plaintiff’s further pole patents
9 were finally/recently allowed, Plaintiff actively began further negotiations with
10 infringers Conrads/Skimlite regarding Plaintiff’s upcoming ‘852 patent and
11 another related pole patent. Plaintiff began these negotiations before either of
12 those patents had even issued (as early as July 1, 2021). In that regard, and for
13 convenient reference, below is a copy of the first part of Plaintiff’s attorney’s July
14 1, 2021 letter to Defendants’ attorneys, directed to the upcoming issuance of both
15 of those pole patents:³⁶

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³⁶ Because the ‘852 patent had not yet issued or been assigned a patent number, the letter below references Applicant’s patent application Ser. No. 15/708,038 (which eventually issued as Applicant’s ‘852 patent).

J. MARK HOLLAND & ASSOCIATES

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IRVINE, CALIFORNIA 92612PATENT, TRADEMARK, COPYRIGHT,
AND RELATED MATTERSTELEPHONE: (949) 718-6750
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J. MARK HOLLAND, PC

July 1, 2021

Via Email

John Sganga, Esq. (john.sganga@knobbe.com)
 Joshua Stowell, Esq. (Joshua.Stowell@knobbe.com)
 Knobbe Martens
 2040 Main Street, 14th Floor
 Irvine, California 92614

Re: Your Clients Skimlite Manufacturing, Inc. and James and
 Barrett Conrad, and Their Pool Poles Having (a) Lever
 Locking and/or (b) Multiple Attachment Hole Features;

Infringement of and Related Damages Based on Resh's
 Recently Allowed Rights in U.S. Patent Application Ser.
 Nos. 13/844,561 and 15/708,038;

Our Files: RESH-L4084; -P3841.3; -P3841.4

Dear Messrs. Sganga and Stowell:

As you will recall, we represent Eric and Jenel Resh and their companies in intellectual property matters. Because this communication relates at least generally to the 2018 litigation between (a) our clients and (b) Skimlite Manufacturing, Inc. and James and Barrett Conrad (in which you represented Skimlite and the Conrads), we are directing this communication to you in the first instance. If you no longer represent those parties (or do not represent them regarding this current matter), please advise and we instead will communicate directly with Skimlite Manufacturing, Inc. and James and Barrett Conrad.

170. Defendants did not respond to the above July 1 letter. Accordingly, Plaintiff sent further notice letters on July 9 and July 14, and finally Defendants' attorneys responded on July 16. Notably, however, Defendants' response did not address Plaintiff's upcoming '852 patent, but instead was directed to the other of Plaintiff's recent related patents.³⁷ Rather than even mentioning any "A.G. Pro Pole," Defendants July 16 letter only addressed Plaintiff's other recent patent, and

³⁷ U.S. Pat. No. 11,090,798 (from Ser. No. 13/844,561 above), directed to multiple pairs of tool attachment holes.

1 stated that Defendants were immediately changing their poles to avoid
 2 infringement (this did not resolve the issue of pre-issuance damages for infringing
 3 that other patent, an issue that is still unresolved). Below is a portion of that July
 4 16 response from infringers' attorneys (again, directed to Plaintiff's other recent
 5 pole patent, not to Plaintiff's '852 patent):

6 Because the hole configurations are not novel or nonobvious, Skimlite's hole configurations are not a
 7 feature that drives demand for Skimlite's poles. However, in an effort to avoid unnecessary disputes and legal
 8 fees, and in good faith, Skimlite has adopted a new hole configuration on its current poles, effective immediately.
 9 All poles manufactured by Skimlite from today forward will have the below hole configuration:

10 INTELLECTUAL PROPERTY + TECHNOLOGY LAW | knobbe.com

11
 12 **Knobbe Martens**

Page 2


13
 14 171. In that July 16 response, regarding Plaintiff's upcoming '852 patent
 15 (which issued from patent application Ser. No. 15/708,038), instead of mentioning
 16 any alleged "A.G. Pro Pole" prior art, Defendants simply stated that they were
 17 "continuing to investigate" that infringement. Below is a screenshot of infringers'
 18 terse July 16 statement:

19
 20 **Knobbe Martens**

Page 3

21
 22 Skimlite continues to investigate your allegations regarding U.S. Patent Application No. 15/708,038.

23 Sincerely,

24 
 25 Joshua J. Stowell

26
 27 cc: John Sganga
 28 Brandon Smith

1
2
3 172. Following Defendants' response on July 16 (with no mention of any
4 "A.G. Pro Pole"), the parties exchanged several further written communications,
5 but Defendants had not stopped infringing Plaintiff's '852 patent by the time the
6 patent issued (on October 12, 2021). Perhaps more importantly, during those
7 further communications, the Conrads/Skimlite infringers had not mentioned
8 anything about an "A.G. Pro Pole."

9 173. Finally, in a letter dated October 18, 2021, **more than three-and-one-**
10 **half months after Plaintiff sent the July 1, 2021 letter** advising that the '852
11 patent was about to issue, the Conrads/Skimlite infringers first mentioned an
12 alleged prior art "A.G. Pro Pole." As further discussed below, this was nearly **a**
13 **week after Plaintiff's '852 patent issued**. Infringers' October 18, 2021 letter was
14 the first time Plaintiff had ever heard of anything called an "A.G. Pro Pole," and/or
15 had ever heard about or seen the pole shown in the pictures within that letter. To
16 provide even further context, and as established in Plaintiff's parent '852 file
17 history, Defendants Conrads/Skimlite had known of Plaintiff's swimming pool
18 pole inventions and patents and applications **for nearly ten years**. During all of
19 that time, including during the 2018 lawsuit by which Plaintiff sued Defendants,
20 Defendants had not mentioned anything about any alleged prior art "A.G. Pro
21 Pole."

22 174. In addition to the strange/extraordinary **delay** in advising Plaintiff of
23 the alleged prior art "A.G. Pro Pole," the **content** of the Conrads/Skimlite
24 attorneys' October 18 letter itself is notably strange and unusual. Among other
25 things, Defendants' attorneys spend virtually all of their October 18, 2021 letter
26 discussing the **features** of that alleged "A.G. Pro Pole." They do **not** present **any**
27 evidence to support their assertions that the "A.G. Pro Pole" *actually was prior art*
28 with respect to Plaintiff's pole inventions. As a result of that complete absence of

1 evidence, and for all that Plaintiff or anyone else could tell, Defendants
2 Conrads/Skimlite may have just assembled that “A.G. Pro Pole” on the same day
3 that the October 18, 2021 letter was sent!

4 175. In that regard, Plaintiff has highlighted below in yellow the few and
5 unsupported assertions by those attorneys. The attorneys (not even Defendants
6 Conrads/Skimlite themselves) assert without support that the “A.G. Pro Pole” is
7 prior art. Those attorneys simply make that naked assertion a single time on page
8 2, and again a single time on page 4 (see below portions of pages 2-4 of
9 Defendants’ attorneys’ October 18 letter):

C. The Claims of the '852 Patent Are Anticipated Or Obvious

All the claims of the '852 patent are invalid as anticipated under 35 U.S.C. § 102 or obvious under 35 U.S.C. § 103 in view of the prior art. Please note that Skimlite has not completed its investigation into prior art related to the '852 patent and anticipates that further prior art will come to light in any litigation involving the '852 patent. The below-identified art is merely exemplary and is not intended to exhaustively describe all prior art.

1. The A.G. Pro Pole Anticipates or Renders Obvious Every Claim

The claims of the '852 patent are anticipated or rendered obvious by the below-pictured A.G. Pro Pole, which was publicly used, publicly known, and sold in the United States at least as early as 2001. The A.G. Pro Pole is an elongate telescoping pole apparatus for cleaning swimming pools.



The A.G. Pro Poles were manufactured by modifying commercially-available telescoping poles sold by Mr. Longarm. The Mr. Longarm logo remains visible on the detent mechanism of the A.G. Pro Pole:



The A.G. Pro Poles include an elongate outer tube and an elongate inner tube configured and sized to be slidable within said outer tube. As shown in the figure below, the inner and outer tubes are "keyed" to prevent relative rotation of the tubes with respect to each other around a central longitudinal axis through the tubes.

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Also shown in the figure above, the outer tube includes a collar that further comprises a “selectively actuatable detent” configured to engage the inner tube at a selected position along the length of said inner tube. As further shown below, the other end of the outer tube has “structure for removably attaching a tool.”



As shown below, the inner tube has first and second ends where the first end is received in said slidable relationship within said outer tube and the second end has a grip attached thereto.

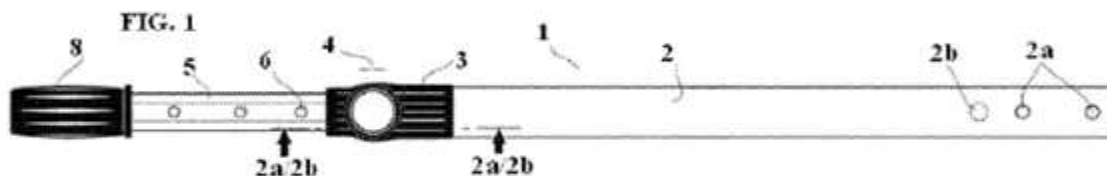


Moreover, the selective sliding action of the tubes causes the respective distance between said grip on said inner tube and said actuatable detent on said first end of said outer tube to change.

The A.G. Pro Pole was not disclosed to the Examiner of the '852 patent during examination. While a patent assigned to Mr. Longarm (U.S. Pat. No. 5,220,707, referred to as “Longarm Patent”) was discussed in the '852 patent’s specification and prosecution history, the A.G. Pro Pole has different features that distinguish it from the poles disclosed in the Longarm Patent. Notably, the A.G. Pro Pole is strikingly similar to Figure 1 of the '852 patent.

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The A.G. Pro Pole is prior art under 35 U.S.C. § 102(b) and anticipates or renders obvious every claim of the '852 patent. To the extent the A.G. Pro Pole alone does not anticipate or render obvious any claim, it would have been obvious to modify the A.G. Pro Pole to include the allegedly missing features in view of known art in the pool pole field. Specifically, with regard to Claim 20, telescoping poles including an "intermediate pole" were well known in the art long before the filing of the '852 patent, as the patentee admitted in the '852 patent. *E.g.*, U.S. Pat. 3,407,424. It would have been obvious to include an "intermediate tube," as described in claim 20, with the A.G. Pro Pole. Accordingly, every claim of the '852 patent is invalid as anticipated or obvious in view of the A.G. Pro Pole.

176. As shown in the highlighted text above, infringers Conrads/Skimlite simply asserted (**without any supporting evidence**) that the A.G. Pro Pole "was publicly used, publicly known, and sold in the United States at least as early as 2001",³⁸ and that the "A.G. Pro Pole **is** prior art" with respect to Plaintiff's '852 inventions.³⁹

177. It seems strange that such "prior art" allegations would be sent without **any** corroborating evidence. It seems **especially** strange that a prestigious patent law firm, and its very seasoned and experienced patent litigation partners, would send such a letter with no supporting evidence. Without any such corroborating evidence, how could anyone receiving or reviewing their letter have any sense that the "A.G. Pro Pole" had in fact **existed** prior to October 18, 2021?

³⁸ Page 2 of their October 18, 2021 letter.

³⁹ Page 4 of their October 18, 2021 letter; emphasis added.

1 178. In any case, given Defendants' failure to present any corroborating
2 evidence that the "A.G. Pro Pole" was in fact prior art, and given that Plaintiff had
3 never heard of the "A.G. Pro Pole," and given Plaintiff's previous experiences with
4 the Conrads/Skimlite and their attorneys, Plaintiff immediately requested any and
5 all evidence that the Conrads/Skimlite had to support/corroborate their assertion
6 (that the "A.G. Pro Pole" was prior art). As noted above, if there was and is no
7 proof that the A.G. Pro Pole qualifies as prior art, there is no reason for Plaintiff,
8 the Patent Office, the courts, or anyone else to waste time, money, and other
9 resources considering this "A.G. Pro Pole" in connection with Plaintiff's '852
10 Patent claims). Below is an excerpt of Plaintiff's attorney's October 20, 2021
11 letter to Defendants' attorneys in that regard, underscoring Plaintiff's concern that
12 the "A.G. Pro Pole" may simply be fake/fraudulent prior art created by and/or on
13 behalf of Defendants:
14
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Further in that regard, please know that my clients share your clients' opinion: the '852 inventions are likewise viewed by my clients as being **very important and very valuable**. As a consequence, my clients expect to review carefully each and every piece of evidence and argument that your clients may present. For example, depending on how things proceed, my clients are prepared to hire experts to review any and all of your clients' "evidence" that seems suspect. By way of further example, and as further discussed below, this includes carefully reviewing the "A.G. Pro Poles" alleged evidence that you presented for the first time in your Monday letter. We make our requests below for further information regarding that alleged "evidence" because we are aware that some infringers are tempted to create fraudulent evidence and even try to mislead a court with such fake information (see, for example,

Messrs. Sganga and Stowell
October 20, 2021
Page 2

FURminator, Inc. v. Kim Laube & Co., Inc., 758 F. Supp. 2d 797 (ED MO 2010); in addition, we have experienced opposing counsel and parties submitting what we believe is false evidence of this type in other lawsuits). Given the substantial value and importance of the '852 patent inventions, we intend to take all reasonable measures to be sure that is not happening in this case.

To underscore our concern about any such fraudulent/fake evidence, here is an excerpt from the *FURminator* decision cited above:

"In the December 21, 2009 Order [doc. # 313], this Court found that Mr. Laube himself (not his attorneys) had acted in bad faith and committed a fraud on the Court. Specifically, the Court found that Mr. Laube had fabricated a fake pet grooming tool and falsely identified it as the "commercial embodiment" of U.S. Patent No. 5,339,840 ("the Koppel patent"), and as "prior art" to the '540 Patent. The Court also found that Mr. Laube then engaged in a series of actions designed to deceive Plaintiff and this Court into believing that the fake pet grooming tool was actually in existence before the effective day of the '540 Patent. Moreover, Mr. Laube's fabrication of a fake pet grooming tool was merely the latest in a pattern and practice of misrepresentations and misconduct in this case. As noted previously by this Court, there is evidence that Mr. Laube fabricated or modified at least one other pet grooming tool, and that he gave conflicting testimony in another court regarding whether he had design documents to support his assertion that he had been designing tools similar to the *FURminator* DeShedding Tools since 1975. Upon considering the misconduct of Mr. Laube in this case and the possible sanctions it could issue, the Court determined that it was appropriate to strike Mr. Laube's testimony and related evidence. While Defendant clearly disagrees with this conclusion, the Court believes that the sanction was appropriate, considering the seriousness of the fraudulent actions."

Second, although your letter asserts that the '852 patent Claims 1 and 20 (and all the other claims) are invalid, it appears that your clients have not made any allegation that their products do not infringe. That position is consistent with our current understanding: the Skimplite Snaplite poles clearly infringe. If your clients instead believe that their products do not infringe (because they lack some literal/equivalent element of Claims 1 and/or 20, for example), please advise.

179. In response to Plaintiff's request for corroborating evidence, the Conrads, Skimlite, and their attorneys **continued** to behave in a way that, frankly, seems at least somewhat strange, curious, paranoid, and/or even suspicious. Specifically, on November 5, 2021, more than two weeks after Defendants' attorneys sent the above October 18 letter, Conrads/Skimlite's attorneys finally permitted Plaintiff's attorney to inspect just the pole itself.⁴⁰ Although the attorneys represented that they were showing to Plaintiff's attorney the exact pole shown in the photos from their October 18, 2021 letter above, those attorneys still did **not** provide any corroborating evidence of the pole's provenance or its status as allegedly qualifying as prior art with respect to Plaintiff's inventions.

180. Accordingly, during that November 5, 2021 inspection, Plaintiff's attorney pointedly asked **again** for any and all such corroborating evidence. Conrads/Skimlite's attorneys responded that they expected to get back to Plaintiff in that regard "in a few days." In hindsight, and as further explained below, it seems at least possible that Conrads/Skimlite's attorneys did not have any such corroborating evidence at the time of that November 5 inspection (nor at the time when those Conrads/Skimlite attorneys sent their earlier October 18, 2021 letter asserting that the A.G. Pro Pole was prior art) – **because the Leduc declaration was not signed until five days later** (on November 10, 2021).

181. In any case, five days after that first inspection (on November 5, 2021), and nearly a month after those attorneys had sent Plaintiff their October 18 letter (asserting that the A.G. Pro Pole was prior art), Conrads/Skimlite's attorneys

⁴⁰ Because Applicant's principals, Eric and Jenel Resh, live and work several hours away from the infringers' attorneys' offices (where the inspection was offered), Applicant's undersigned attorney went to the inspection in person and (by agreement with the infringers' attorneys) connected Eric and Jenel Resh via teleconference to the location of the inspection. This arrangement was also followed in the further November 12, 2021 inspection discussed below, to save the Reshes from significant time and expense and effort to drive to/from the inspection.

1 apparently finally obtained a declaration which purported to establish “facts”
 2 regarding the prior art status of the A.G. Pro Pole. As further discussed herein, that
 3 declaration apparently was signed by a person named Ray Leduc (a person
 4 unknown to Plaintiff), who apparently has lived north of Los Angeles since the
 5 1980’s.⁴¹

6 182. The strange/paranoid behavior of infringers Conrads/Skimlite and/or
 7 their attorneys continued. Although Conrads/Skimlite’s attorneys eventually
 8 permitted Plaintiff to “inspect” that Leduc declaration (a few days after Mr. Leduc
 9 apparently signed it), for some reason, those attorneys did **not** permit Plaintiff to
 10 copy or photograph or have a copy of that declaration. That refusal by Defendants’
 11 attorneys (to permit Plaintiff a copy of the Leduc declaration) is strange – the
 12 declaration will almost certainly be discoverable in any litigation between the
 13 parties over these issues, and “normally” such a declaration would be provided to
 14 the patent owner by an infringer asserting that the declaration established
 15 something as “prior art.” If the infringer does **not** provide that evidence, the
 16 infringer is effectively escalating the dispute directly into litigation, and forcing the
 17 patent owner to file a lawsuit to obtain that alleged “prior art”
 18 evidence/information.

19 183. As mentioned above, Defendants’ strange behavior seems to indicate
 20 that Defendants (and/or their attorneys) apparently do not even themselves believe
 21 the allegations set forth in the Leduc declaration, or at least that Defendants’
 22

23
 24 ⁴¹ Mr. Leduc’s declaration says that he lived in West Hills, California, for at
 25 least some of that time. On a related “geographical” point, and as further discussed
 26 below, the three SCP store locations mentioned by Mr. Leduc in his declaration (at
 27 which Mr. Leduc allegedly sold “A.G. Pro Poles”) are all located just north of Los
 28 Angeles. Two of those stores (as well as Mr. Leduc’s West Hills business) are
 located in the San Fernando Valley. In an “update” on Mr. Leduc’s allegations
 regarding those stores in 2000-2002, apparently two of the three stores have since
 been re-branded as “Superior Pool Products” stores.

1 attorneys do not want to be liable or tainted with presenting “false” evidence
2 regarding an “A.G. Pro Pole.”

3 184. In any case, Plaintiff makes the comments herein about Defendants’
4 Leduc declaration based on (1) Plaintiff’s attorney eventually viewing (but not
5 being permitted to copy) that Leduc declaration, and (2) Plaintiff’s attorney seeing
6 a date (of November 10, 2021) next to the signature on that Leduc declaration.

7 185. More specifically, on November 12, 2021 (two days after Mr. Leduc
8 apparently signed his declaration), Defendants’ attorneys permitted Plaintiff to
9 “inspect” that Leduc declaration (along with several other boxes and alleged pole
10 components, and again inspecting the same “A.G. Pro Pole” from the first
11 inspection on November 5). During this second “inspection,” Defendants’
12 attorneys did **not** permit Plaintiff to copy or photograph the Leduc declaration, nor
13 those few other boxes and materials. For clarity, the **only** pole presented as part of
14 this second inspection was (according to Defendants’ attorneys) the same solitary
15 pole from the November 5, 2021 inspection.

16 186. During that second November 12 inspection, Plaintiff asked whether
17 those attorneys had any other information regarding the **specific** A.G. Pro Pole in
18 their possession (in the inspections): where it had been found, who had been in
19 possession of that pole, when and how it was located, etc. In response, those
20 attorneys said that they **had** additional information, but that they were **not**
21 “prepared to share that additional information” with Plaintiff.

22 187. Again, for the reasons mentioned above, this refusal by Defendants’
23 attorneys seems very strange, especially for a well-established patent law firm and
24 seasoned patent litigators. In any case, Plaintiff also expects to obtain that further
25 information in any litigation that may become necessary with the
26 Conrads/Skimlite, but to date the Conrads/Skimlite have refused to provide any
27 such alleged “additional information” to Plaintiff.
28

188. As mentioned above, the Conrads/Skimlite attorneys did not provide to Plaintiff a copy of the above-described Declaration of Ray Leduc (and likewise did not permit Plaintiff to take photos of that declaration). However, based on some of the notes that those attorneys permitted Plaintiff's attorney to take during the November 12, 2021 inspection, the following appear to be allegations within that Leduc declaration (again, Plaintiff does not even know whether Mr. Leduc is a real person, and Plaintiff certainly is not currently in a position to attest to whether any of these "Leduc allegations" are true). Based on Plaintiff's attorneys' notes, Mr. Leduc alleges in his November 10, 2021 declaration as follows:

- Mr. Leduc has been a pool man (cleaning swimming pools for other people) since the early 1980's, with the exception of the years 1986-1990);
- In 2000, Mr. Leduc began working on what he called the A.G. Pro Pole, and he made the "A.G. Pro Pole" shown in the photos in the Conrads/Skimlite attorneys' October 18, 2021 letter;
- To make the "A.G. Pro Pole," an unnamed "neighbor" suggested to Mr. Leduc that Mr. Leduc should "reverse" a painter's pole;
- Mr. Leduc used the A.G. Pro Pole for 3-4 months in 2000, and continued to use it in his pool cleaning business for several years after that;
- Mr. Leduc approached the makers of the painter's pole he reversed (a company called Mr. Long-Arm) to see if they would be interested in making the A.G. Pro Pole. They told Mr. Leduc that they were not interested, due to the costs involved;
- Mr. Long-Arm did sell more painter's poles to Mr. Leduc, and at least one of Mr. Leduc's neighbors (also unnamed) came over to Mr. Leduc's house and saw those poles;
- In late 2000, Mr. Leduc began selling his A.G. Pro Poles to others in the pool industry. The purchasers were "primarily" a company/distributor called SCP. Mr. Leduc estimates that he sold at least 250 poles to SCP, in their stores in Canoga Park, Van Nuys, and Monrovia, California. Mr. Leduc consulted with Danny Cerventes (who worked at SCP), and priced the

poles at approximately \$50/pole. For convenient reference, Plaintiff expects to supplement this filing with a map of those stores, along with indication of the close proximity of Mr. Leduc and Defendants Conrads/Skimlite during apparently at least a number of years in the 1980s and/or 1990s (indicating at least the possibility that Mr. Leduc is a friend or acquaintance of the Conrads/Skimlite, as discussed in *The Barbed Wire Case* and other decisions above);

- Mr. Leduc also “gave” A.G. Pro Poles to third parties, namely two individuals named Art Grimsith and Roger Boez;
- The pole being shown and inspected at Defendants Conrads/Skimlite attorneys’ offices is one that Mr. Leduc made and sold;
- Mr. Leduc attached to his declaration and discussed in his declaration several purchase orders from Mr. Long-Arm, for “Super Tab Lok 8-16” poles. These purchase orders were dated September 2000, February 2001, and October 12 and 30, 2001. They appear to total 240 poles, but the last document appears to credit ½ of the previous order (perhaps 12 units?) because those poles apparently were cracked and not saleable. Mr. Leduc says that he converted all or substantially all of those Mr. Long-Arm poles into A.G. Pro Poles, and then sold or gave those away; and
- Mr. Leduc also attached an October 29, 2001 purchase order from Pentair Pool Products for 75 aluminum adapters [as discussed elsewhere herein; these aluminum adapters are generic parts used on the end of existing all-fiberglass twist-lock pool poles].

189. As mentioned above, the Conrads/Skimlite infringers’ evidence does not include any corroboration of Mr. Leduc’s “oral testimony” assertions in his November 10, 2021 declaration. It also is not credible for a number of other reasons, some of which are discussed below.

a. Defendants’ “Evidence” Merely Lists/Consists of Unassembled Commercially Available Poles/Parts

190. As noted above, Mr. Leduc’s “mysterious” declaration included some attached documents, and included some alleged “oral testimony” statements from

1 Mr. Leduc's declaration related to those documents. Importantly, none of those
 2 documents themselves relate to any actual **reversed/assembled** "A.G. Pro Pole,"
 3 or any such assembled pole being publicly used, publicly known, offered for sale,
 4 or sold, at **any** time (let alone prior to Plaintiff's relevant pole inventions).
 5 Accordingly, infringers are again only presenting uncorroborated oral testimony,
 6 which is insufficient to establish the "A.G. Pro Pole" as prior art.

7 191. More specifically, the documents attached to Defendants' Leduc
 8 declaration are directed to three types of prior art poles/components. Those
 9 documents have **no** corroboration showing that (a) these components ever were
 10 actually "reversed" and/or otherwise assembled into an "A.G. Pro Pole," (b) by
 11 Mr. Leduc or anyone, (c) in the years 2000-2002 or at any time prior to the
 12 photograph in Defendants' attorneys' letter of October 18, 2021. As discussed
 13 herein, without some corroboration regarding the alleged assembly, public use,
 14 public sale, etc. of these components, at a time that makes those assemblies "prior
 15 art," **the mere existence of these components is meaningless:**

16 192. Plaintiff again lists here those three unassembled and commercially
 17 available components that are included in Mr. Leduc's "oral testimony" declaration
 18 and related materials:

- 19 1. Prior art Mr. Long-Arm "painters' poles;"
- 20 2. Prior art aluminum swages/adapters for use with all-fiberglass twist-lock
- 21 pool poles; and
- 22 3. Apparently prior art black rubber bicycle handlebar grips, for bicycle
- 23 handlebars and prior art pool poles (and presumably many other possible
- 24 uses).

25 193. Before discussing below further detail about each of those
 26 unassembled prior art components, and to provide a helpful frame of reference for
 27 considering those prior, existing, commercially-available aluminum swage
 28

adapters (commonly used on all-fiberglass pool poles) and handlebar grips (commonly used on all-fiberglass and other pool poles), Plaintiff first discloses and discusses briefly here all-fiberglass swimming pool poles.

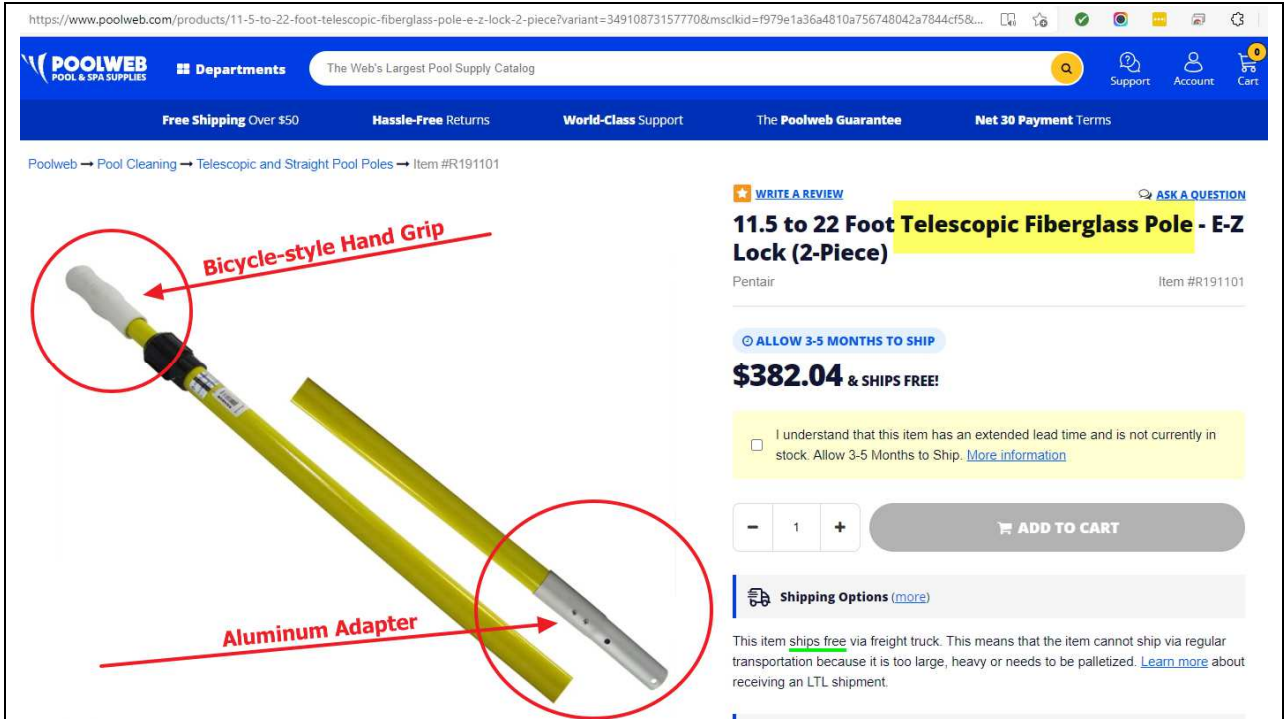
i. Prior Art ALL-FIBERGLASS Swimming Pool Poles Use Aluminum Swage Adapters and Grips Like Those Mentioned in Mr. Leduc's Declaration and Related Materials

194. Based on Plaintiff's current recollection and understanding, the aluminum swage adapters and grips components mentioned in Mr. Leduc's declaration and related materials apparently were commonplace in swimming pool pole products in 2000-2002, and they remain so today. As shown below, many swimming pool poles (of all kinds) used (and still use) bicycle-handlebar-style grips, and all-fiberglass twist-lock swimming pool poles used (and still use) the aluminum swage adapters. Below are examples and discussion related to same.⁴²

195. Prior art "all fiberglass swimming pool poles" are distinct in many ways from all of the commercial embodiments of Plaintiff's inventions: whether those commercial embodiments of Plaintiff's inventions are made by Plaintiff or instead by one of the four known infringers, those commercial embodiments of "Plaintiff's inventions" swimming pool poles have (to date) been made from all aluminum tubes. Those prior art "all fiberglass swimming pool poles" are likewise patentably distinct from Plaintiff's '852 Patent claims (as discussed elsewhere herein).

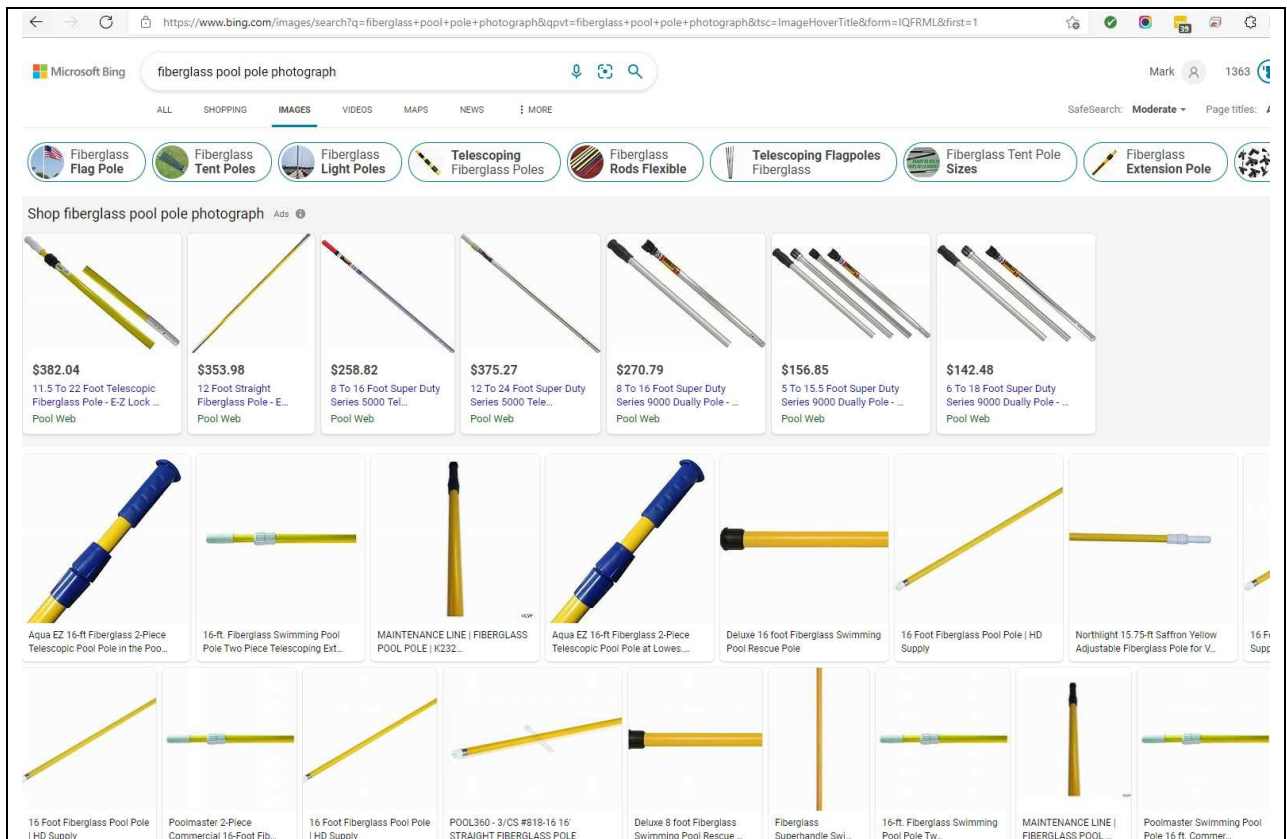
⁴² Mr. Leduc effectively "swore" in his declaration that he assembled those two commonplace prior art components onto a commonplace prior art Mr. Long-Arm painters' pole, and called his assembly an "A.G. Pro Pole." As noted repeatedly herein, however, he did not provide any corroborating evidence in that regard.

196. Among other things, all-fiberglass swimming pool poles typically include (a) rubber bicycle-handlebar-style hand grips (on the gripping end of the pole) and (b) aluminum adapters (on the “tool” end), as shown here:⁴³



197. In passing, most of the thousands of poles shown on that same website/search (whether all-fiberglass or all-aluminum) appear to have a rubber bicycle-handlebar-style hand grip. Here is a screenshot of the top portion of those search results, showing those handlebar-style grips:

⁴³ Although this pole is sold and used as a “single” pole made from two telescoping tubes, it is shown in this online screenshot in two parts because of its length. This permits viewers to see details of both ends of the pole (from [https://www.poolweb.com/products/11-5-to-22-foot-telescopic-fiberglass-pole-e-z-lock-2-piece?variant=34910873157770&msclkid=f979e1a36a4810a756748042a7844cf5&utm_source=bing&utm_medium=cpc&utm_campaign=**LP%20-%20Shop%20-%20Hardware%20%26%20Accessories&utm_term=4582901905188568&utm_content=R191101%20%7C%2011.5%20to%2022%20Foot%20Telescopic%20Fiberglass%20Pole%20-%20E-Z%20Lock%20\(2-Piece\)%20%7C%20%24463.03](https://www.poolweb.com/products/11-5-to-22-foot-telescopic-fiberglass-pole-e-z-lock-2-piece?variant=34910873157770&msclkid=f979e1a36a4810a756748042a7844cf5&utm_source=bing&utm_medium=cpc&utm_campaign=**LP%20-%20Shop%20-%20Hardware%20%26%20Accessories&utm_term=4582901905188568&utm_content=R191101%20%7C%2011.5%20to%2022%20Foot%20Telescopic%20Fiberglass%20Pole%20-%20E-Z%20Lock%20(2-Piece)%20%7C%20%24463.03)).



198. Other examples of “all fiberglass” swimming pool poles” include ones sold by Defendants Conrads/Skimlite. Below are screenshots regarding Skimlite’s current “8000 Series” all-fiberglass swimming pool poles (with a black bicycle-handlebar-style grip in the upper right part of the screenshot below):



199. Here are further details from that same online posting about Skimplite's all-fiberglass swimming pool poles:

- Non metal pole, not conducting electricity, hot or cold temperatures
- All lengths, depths, and sizes are approximate
- Fiberglass Tubing

Purchase Options



Skimplite 8000 Fiberglass Series Telepole
with Outside Lock System | 12' to 24' | 2-
Piece | 8024
\$137.26

Skimplite created this line for customers needing fiberglass tubing. This American made pole provides all of the benefits of a nonmetal pole, such as not conducting electricity or hot and cold temperatures.

- Outside Lock has been an industry favorite since 1959 and is made of the strongest plastics ever made. the nylon male fitting is pressed onto the outside tube with a ton of pressure, so it won't fall off. The female and ferrule fittings are easily replaced when worn.

Brand: SKIMPLITE

FROM: https://www.poolsupplyunlimited.com/pool/skimlite-8016-fiberglass-series-outside-lock-telepole/91486p1?utm_source=google&utm_medium=organic&utm_campaign=surfaces&utm_term=%7Bquery%7D&gclid=Cj0KCQiA-

1 [eeMBhCpARIsAAZfxZAp24uAyfXSh2KrjDX-9VHrP-](#)
2 [b4FoAtVIQO3cqJBB2iNQC83w5jLIaAoBtEALw_wcB](#)

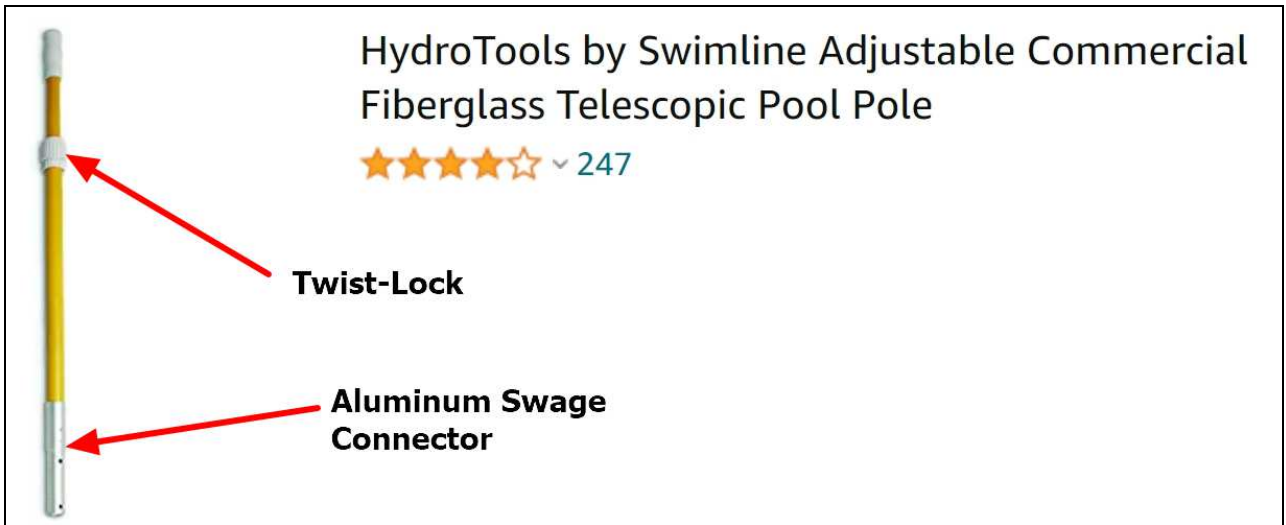
3 200. Like prior art all-aluminum poles, Skimlite's and other all-fiberglass
4 poles typically used twist-lock or clamp technology to adjust the length of the
5 poles (similar to the black twist-lock nuts used on the Skimlite poles shown
6 above).

7 201. Another relevant aspect of prior art all-fiberglass swimming pool
8 poles is that they typically use an "aluminum swage/adapter."⁴⁴ The prior art all-
9 fiberglass swimming pool poles did not (and even today do not) attach tools
10 directly to the fiberglass tubes. Instead, those poles typically included relatively
11 short (approximately 7.5") separate aluminum "swage" adapters attached to the
12 "tool end" of one of the fiberglass tubes.

13 202. Below are screenshots showing current models of various twist-lock
14 all fiberglass poles. According to the information presently available to Plaintiff,
15 any such telescoping fiberglass pool poles that qualify as prior art with respect to
16 Plaintiff's inventions had a twist-lock or clamping mechanism to adjust the length
17 of the pole. None of those telescoping fiberglass poles had detent/lever
18 locks/buttons to adjust the pole length. Most or perhaps all of them included both
19 a rubber bicycle-handle-style grip and an aluminum swage adapter.

20 203. The first example below has highlighting added by Plaintiff, to point
21 out the twist-lock and the separate aluminum swage connector. The grip is at the
22 end opposite the swage adapter. Both of these examples below show two
23 FIBERGLASS tubes (yellow in the screenshots below) used to make a pool pole,
24 and both use a separate aluminum swage connector for connecting tools:

25 _____
26 ⁴⁴ These prior art adapters appear to be similar or perhaps even identical to
27 the aluminum swages/adapters used in both the alleged "hybrid"
28 aluminum/fiberglass swimming pool poles discussed below (the Solakian
prototype pole and the infringers' alleged "A.G. Pro Pole").



FROM:

https://www.amazon.com/s?k=fiberglass+pool+pole&gclid=Cj0KCQiAkNiMBhCxARIsAIDDKNWaOJ_p4QtUqtn2crngUp07c_0R8zZpBoYsyQRdhuBF0Ws_TOCAGeUaAhxVEALw_wcB&hvadid=241588181664&hvdev=c&hvlocphy=9031549&hvnetw=g&hvqmt=e&hvrnd=4744716846927560009&hvtargid=kwd-4934486865&hydacr=13737_10192253&tag=googhydr-20&ref=pd_sl_4frkcueai4_e



FROM:

https://www.poolsupplyunlimited.com/pool/skimlite-8016-fiberglass-series-outside-lock-telepole/91486p1?utm_source=google&utm_medium=organic&utm_campaign=surfaces&utm_term=%7Bquery%7D&gclid=Cj0KCQiAkNiMBhCxARIsAIDDKNX

[SKtN15oLVQZeCNcpXB90vz0FQrwTMH86i3u1HXU1uad0UQvKxAsIaAug4EALw_wcB](https://www.poolsupplyunlimited.com/pool/skimlite-8016-fiberglass-series-outside-lock-telepole/91486p1?utm_source=google&utm_medium=organic&utm_campaign=surfaces&utm_term=%7Bquery%7D&gclid=Cj0KCQiAkNiMBhCxARIsAIDDKNXSKtN15oLVQZeCNcpXB90vz0FQrwTMH86i3u1HXU1uad0UQvKxAsIaAug4EALw_wcB).

204. Below are related customer comments from that second Internet page (immediately above), explaining some customers' reasons for buying that telescoping all-fiberglass swimming pool pole instead of an aluminum pole:

The screenshot shows the Pool Supply Unlimited website. The header includes the logo, navigation links (POOL, SPA, RECREATION, PARTS, BRANDS), a contact number (888) 836-6025, and links for Account and Cart. A search bar is present. Below the header, there are tabs for RELATED ITEMS, OVERVIEW, Q & A, REVIEWS, and FOR YOU. The OVERVIEW tab is selected, showing a description of the Skimlite product and a list of customer reviews. The reviews are titled "Why I Chose This:" and include quotes from customers explaining their reasons for purchasing the product.

POOL SUPPLY UNLIMITED POOL SPA RECREATION PARTS BRANDS Have a Question? (888) 836-6025 Account Cart

Search for items

RELATED ITEMS OVERVIEW Q & A REVIEWS FOR YOU

OVERVIEW

Skimlite created this line for customers needing fiberglass tubing. This American made pole provides all of the benefits of a nonmetal pole, such as not conducting electricity or hot and cold temperatures.

- **Outside Lock** has been an industry favorite since 1959 and is made of the strongest plastics ever made. the nylon male fitting is pressed onto the outside tube with a ton of pressure, so it won't fall off. The female and ferrule fittings are easily replaced when worn.

Brand: SKIMLITE

Why I Chose This:

“ The hubs wanted a stronger pole to clean the pool. No aluminum. Thought I'd give you a try, although your shipping cost is ridiculously high.
—Lynda M., purchased May 16, 2021

“ Needed a pole for brushing that will not bend or break like the lightweight aluminum poles.
—David C., purchased Aug 3, 2017

“ Because the 12-24 had an insane amount of shipping on it.
—Adam L., purchased May 23, 2016

“ Wanted to try a professional grade fiberglass pole.
—Paul C., purchased Dec 14, 2015

FROM: https://www.poolsupplyunlimited.com/pool/skimlite-8016-fiberglass-series-outside-lock-telepole/91486p1?utm_source=google&utm_medium=organic&utm_campaign=surfaces&utm_term=%7Bquery%7D&gclid=Cj0KCQiAkNiMBhCxARIsAIDDKNXSKtN15oLVQZeCNcpXB90vz0FQrwTMH86i3u1HXU1uad0UQvKxAsIaAug4EALw_wcB.

205. As stated above, the “all-fiberglass” poles apparently are promoted (by infringer Skimlite and perhaps others) as not conducting electricity, and not

1 getting “hot” or “cold” the way that metal pool poles can, depending on the
2 weather. According to the statements above, some consumers also believe that the
3 all-fiberglass poles are stronger than aluminum poles (and will therefore be less
4 likely to bend or break).

5 206. In case it is not otherwise clear, the aluminum swage adapters shown
6 above were (and still are) used to provide a conventionally sized aluminum
7 attachment end to “all-fiberglass” swimming pool poles. The outermost end is
8 shaped and sized to resemble the end of a conventional all-aluminum pole, so that
9 the same tools can be used on either style pool pole. More specifically, as with all-
10 aluminum poles, users of “all-fiberglass” swimming pool poles typically need to
11 selectively attach (and detach) leaf rakes and brushes and other cleaning tools to
12 the poles, to be able to use those different tools to clean swimming pools and not
13 have to have a separate pole for each tool. As presently understood, the aluminum
14 swage attachment ends/adapters on the “all-fiberglass” poles permit that desired
15 selective attachment (with tools that also can be used on all-aluminum pool poles),
16 and also reduce the risks (a) of damaging the fiberglass or (b) of fiberglass shards
17 injuring the user. Replacement aluminum adapters were and still are sold,
18 apparently in case the original adapters became damaged or unusable.

19 207. In fact, to Plaintiff’s knowledge, no one (to this day) attaches pool
20 tools directly to a fiberglass pole.⁴⁵ Instead, all-fiberglass swimming pool poles
21

22 ⁴⁵ Another swimming pool pole manufacturer, Primate Pool Tools, makes (or
23 has made) a carbon fiber pole that has tool attachment holes directly in its carbon
24 fiber outer tube, with no swage or aluminum adapter. This may be possible with
25 carbon fiber tubes, because the tube walls made from carbon fiber can be thinner
26 than the tube walls made from fiberglass (carbon fiber is stronger than fiberglass).
27 The attachment holes on carbon fiber tubes may also stay cleaner than the
28 attachment holes drilled directly in fiberglass tubes. The resulting shards (in and
around attachment holes in fiberglass) would be almost certain to severely damage
a user’s hands (particularly the user’s thumb and forefinger) when attaching and/or
removing a swimming pool tool from the pole. In another difference from
Applicant’s pole inventions, Primate uses compression locks, and apparently
started selling its poles after Applicant’s detent poles were already on the market.

1 typically attach their swaged aluminum adapter ends to the fiberglass tubes in a
 2 way that requires additional parts, complexity, and steps to manufacture and/or
 3 replace. Typically, the aluminum swages are attached to the ends of the fiberglass
 4 tubes with a rivet or screw, and/or by gluing. Certain embodiments of Plaintiff's
 5 claimed pole inventions below eliminate those extra parts and that complexity, by
 6 permitting the attachment holes to be drilled or otherwise formed directly in the
 7 sidewall of the aluminum tube itself.

8
 9 *ii. Defendants' "Corroboration Evidence" Only Shows Unassembled*
 10 *Commercially Available Prior Art Mr. Long-Arm Painters' Poles*

11 208. These components in the Leduc declaration (Mr. Long-Arm painters'
 12 poles) are painters' poles, sold by a third party for use in painting. The fact that
 13 Mr. Leduc may or may not have purchased or possessed (or even sold or given
 14 away) such existing, commercially-available painters' poles at any time is
 15 meaningless for purposes of corroborating his allegations of "prior art" "A.G. Pro
 16 Poles."

17 209. Among other things, Plaintiff already disclosed to the Patent Office
 18 these prior art Mr. Long-Arm painters' poles (both in Plaintiff's '852 patent
 19 application itself, and during the '852 prosecution). In fact, near the end of page 3
 20 of their October 18, 2021 letter above (see excerpt copied and highlighted below),
 21 Defendants' attorneys even **admitted** that Plaintiff disclosed this prior art Mr.
 22 Long-Arm painters' pole to the Patent Office during prosecution of Plaintiff's '852
 23 patent, stating:

24 While a patent assigned to Mr. Longarm (U.S. Pat. No. 5,220,707, referred to as "Longarm Patent") was
 25 discussed in the '852 patent's specification and prosecution history, the A.G. Pro Pole has different

26 210. Those disclosures by Plaintiff to the Patent Office include at least the
 27 following within Plaintiff's '852 patent itself (from col. 5):
 28

Also, the locking devices of telepoles used in other applications are unsuitable for swimming pool cleaning applications. For instance, external locking devices, such as those found on telepoles used for window washing, painting, or marine applications, tend to make pool cleaning difficult as they can easily catch on the edge of a pool or other objects when the telepole is being used, among other things. For example, the Mr. Long Arm Pole (shown in U.S. Pat. No. 5,220,707) has an external locking device with a button that activates a detent mechanism to engage and release the inner tube of the telepole, but is not suitable in swimming pool applications for a number of reasons. Among other things, it is configured the opposite of what is desirable/useful for cleaning swimming pools (i.e., the lighter parts of the pole extending away from the user). Further, the Mr. Long Arm pole is sealed at both ends by a grip on the outer tube end and a threaded adapter on the inner tube end, and therefore is unable to accommodate the commonly-used V-clips of most swimming pool cleaning tools. Moreover, its inner tube is unsealed on the end opposite the threaded adapter (the end that is inserted into the outer tube) and where a series of holes that receive the detent mechanism of the locking device are located along the inner pole's length. These openings in the inner tube would allow water to enter the pole when it is placed in a pool, etc. and make the telepole awkward and cumbersome to maneuver and control during use. Additionally, since the grip is mounted on the end of the outer pole, the detent mechanism would almost always be underwater during use, and adjusting the pole's length would inconveniently require a user to withdraw some or all of the pole from the pool.

211. Plaintiff also submitted to the Patent Office separate detailed information about the Mr. Long-Arm Painters' Poles, by filing related materials in Information Disclosure Statements (IDS), such as shown on page 3 of the "References Cited" at the beginning of Plaintiff's '852 patent, copied here:

Product photos of Mr. LongArm Button Lock extension pole, www.mrlongarm.com, Sep. 10, 2015.
Product photos of Mr. LongArm extension pole with compression nut locking device, www.mrlongarm.com, Sep. 10, 2015.

212. The Patent Office obviously allowed and issued Plaintiff's '852 patent over that existing prior art Mr. Long-Arm patent/pole technology. Thus, and

again, without some corroborating evidence, the mere existence of Mr. Long-Arm painters' poles (in the possession of Mr. Leduc or anyone else) does not constitute prior art with respect to Plaintiff's pole inventions.

iii. Defendants' "Corroboration Evidence" Only Shows Unassembled Commercially Available Prior Art Aluminum Swages/Adapters

213. Similar considerations apply to the other unassembled components Mr. Leduc identifies in his declaration. As discussed above, prior art aluminum swages or adapters are conventional generic parts sold for use with all-fiberglass swimming pool poles, and perhaps for other uses. The fact that Mr. Leduc may or may not have purchased or possessed (or even sold or given away) such existing, commercially-available swages/adapters at any time is meaningless for purposes of corroborating his allegations of assembled "prior art" "A.G. Pro Poles." Mr. Leduc may have had those aluminum swages for his own use on all-fiberglass swimming pool poles, or to give/sell to third parties, or for some other unrelated reason/s.

214. Again, without some actual corroboration, the existence of such aluminum swages or adapters (in the possession of Mr. Leduc or anyone else) does not constitute prior art with respect to Plaintiff's pole inventions.

iv. Defendants' "Corroboration Evidence" Only Shows Unassembled Commercially Available Prior Art Rubber Bicycle Handlebar Grips

215. As with the foregoing Mr. Long-Arm painters' poles and aluminum swages or adapters, the apparently prior art conventional black rubber bicycle handlebar grips Mr. Leduc mentions in his declaration do not establish the "A.G. Pro Pole" as "prior art." As shown above, these grips appear to be conventional generic parts sold for bicycles handlebars and swimming pool poles of many types, and presumably for many other possible uses. The fact that Mr. Leduc may or may

1 not have purchased or possessed (or even sold or given away) such existing,
 2 commercially-available grips at any time is meaningless for purposes of
 3 corroborating his allegations of assembled “prior art” “A.G. Pro Poles.”

4 216. In addition to the foregoing information regarding “grips” for
 5 swimming pool telepoles, Plaintiff sets forth here further evidence of the
 6 ubiquitous nature of such “grips.” The Solakian’s company Val-Pak (discussed in
 7 the ‘852 patent prosecution and elsewhere herein) itself makes a “bicycle-style
 8 handle grip” for telescoping swimming pool poles. As shown below, that part is
 9 available on Amazon:



23 217. Moreover, Defendants Conrads/Skimlite have products (infringing
 24 and others) that use these same types of “bicycle handlebar grips,” as shown in the
 25 following online websites:
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 27
 28

- On infringer Skimlite's own website, they show that **Skimlite itself uses bicycle-style handgrips** on most, if not all, of its poles:

Please contact your local distributor for pricing and availability. If you are a homeowner looking for parts and cannot buy through distribution please [CLICK HERE](#) for some online options.



218. Other websites sell Skimlite poles, and shoppers even ask for generic replacement “bicycle grips”:

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https://www.bing.com/search?q=skimlite%20grips&q&form=QBRE&sp=-1&pq=skimlite%20grips&sc=1








skimlite grips

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Ads

						
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\$49.95	\$15.99	\$35.00	\$9.88	\$9.88	\$9.49	\$18.99
Amazon.com	Amazon.com Free shipping	evo	Pool Supply...	Pool Supply...	Rock Bott...	Ave

Skimlite Pole Grip | Black | 5552





<https://www.poolsupplyunlimited.com/pool/skimlite-5552-pole-grip/168809p1>

Home Pool Pool & Spa Maintenance Supplies Replacement Parts Skimlite Pole Grip | Black | 5552. NOTICE: The pool & spa industry continues to face industry ...

Brand: SKIMLITE Price: \$8.44

Images of Skimlite GRIPS

bing.com/images

			
Skimlite Pole Grip Red 5553	Skimlite Pole Grip Black 5552	Skimlite Hand Grip White 555	POOL360 HAND GF

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https://www.poolsupplyunlimited.com/pool/skimlite-6012-snaplite-telepole-with-button-lock-pole/166473p1

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Skimlite 6000 Snaplite Series Telepole with Button Lock Pole | 6' to 12' | 2-Pieces | 6012

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OVERVIEW Q & A REVIEWS FOR YOU

OVERVIEW

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SNAPLITE™ SERIES The SnapLite™ series is quickly becoming one of Skimlite's most popular poles. The lock is similar to what has been utilized as the primary locking mechanism in the painting industry for years. With a simple push of a button you can slide and lock your pole to your desired length. All Snaplite™ poles have a unique decagon shape to them which keeps the pole from rotating and provides ultra-smooth sliding.

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• Snaplite Skimlite's newest lock design that allows you to slide and lock the pole at your desired length with a simple push of a button

Brand: SKIMLITE

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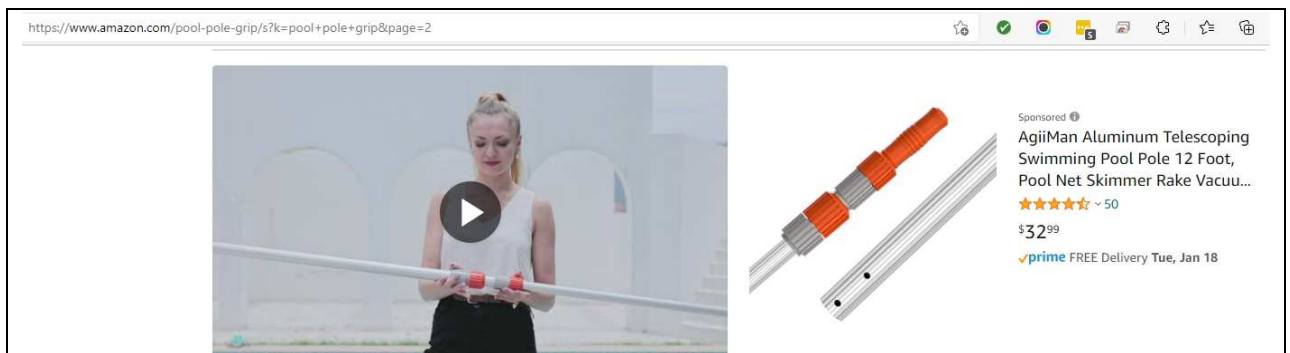
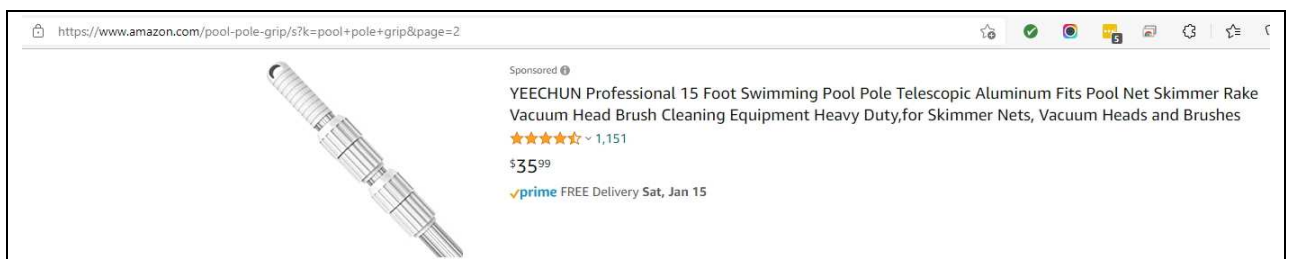
Where can I buy a replacement lock button for this pole?
Scott B on Jun 29, 2019

Add Answer I Have This Question Too (5)

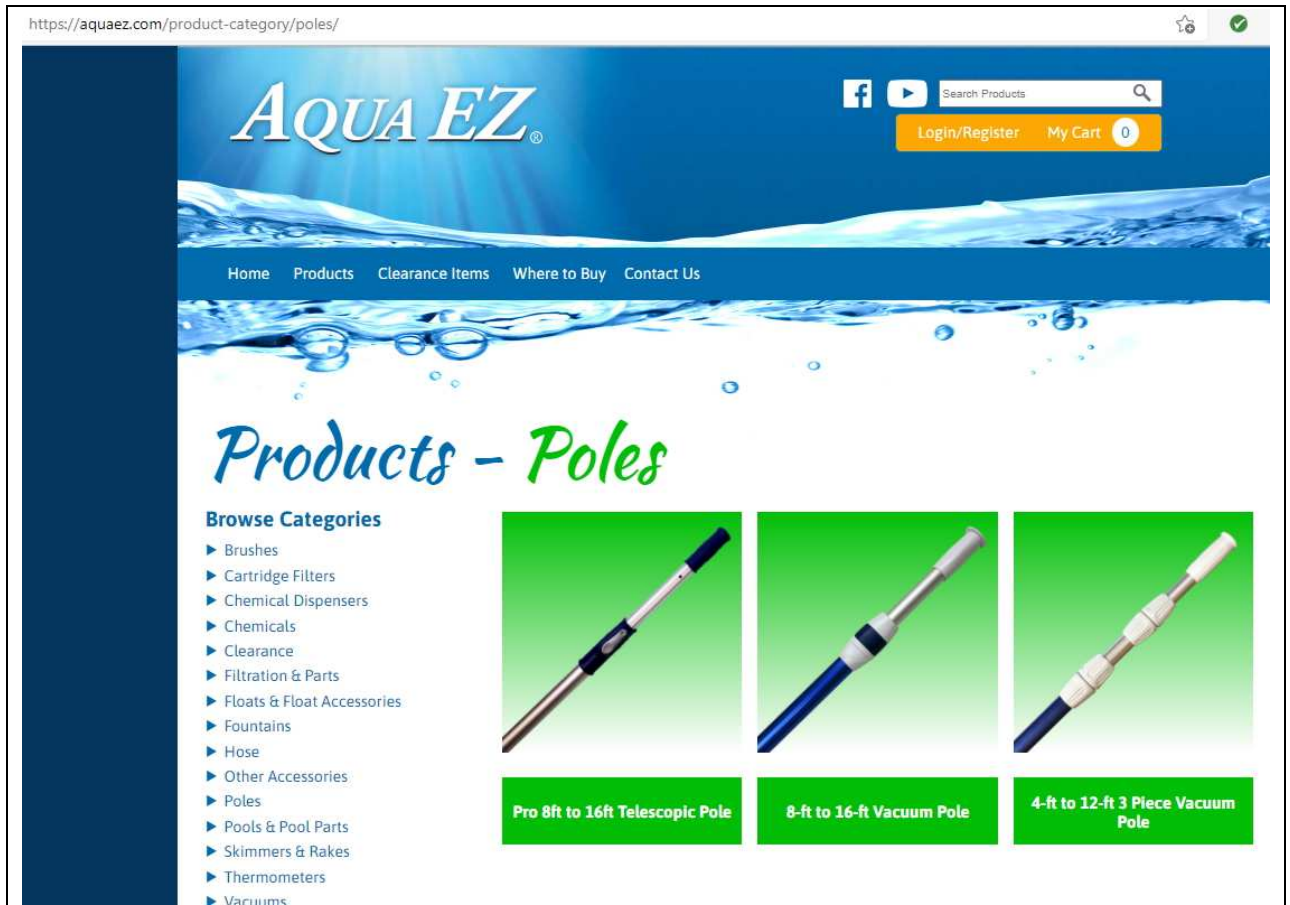
What size bicycle grip will fit this pole?
A shopper on Aug 25, 2021

Add Answer I Have This Question Too (0)

- Here are some of the many third-party pool poles (PoolWhale and Yeechun and AgiiMan) that use “bicycle handlebar style grips”:



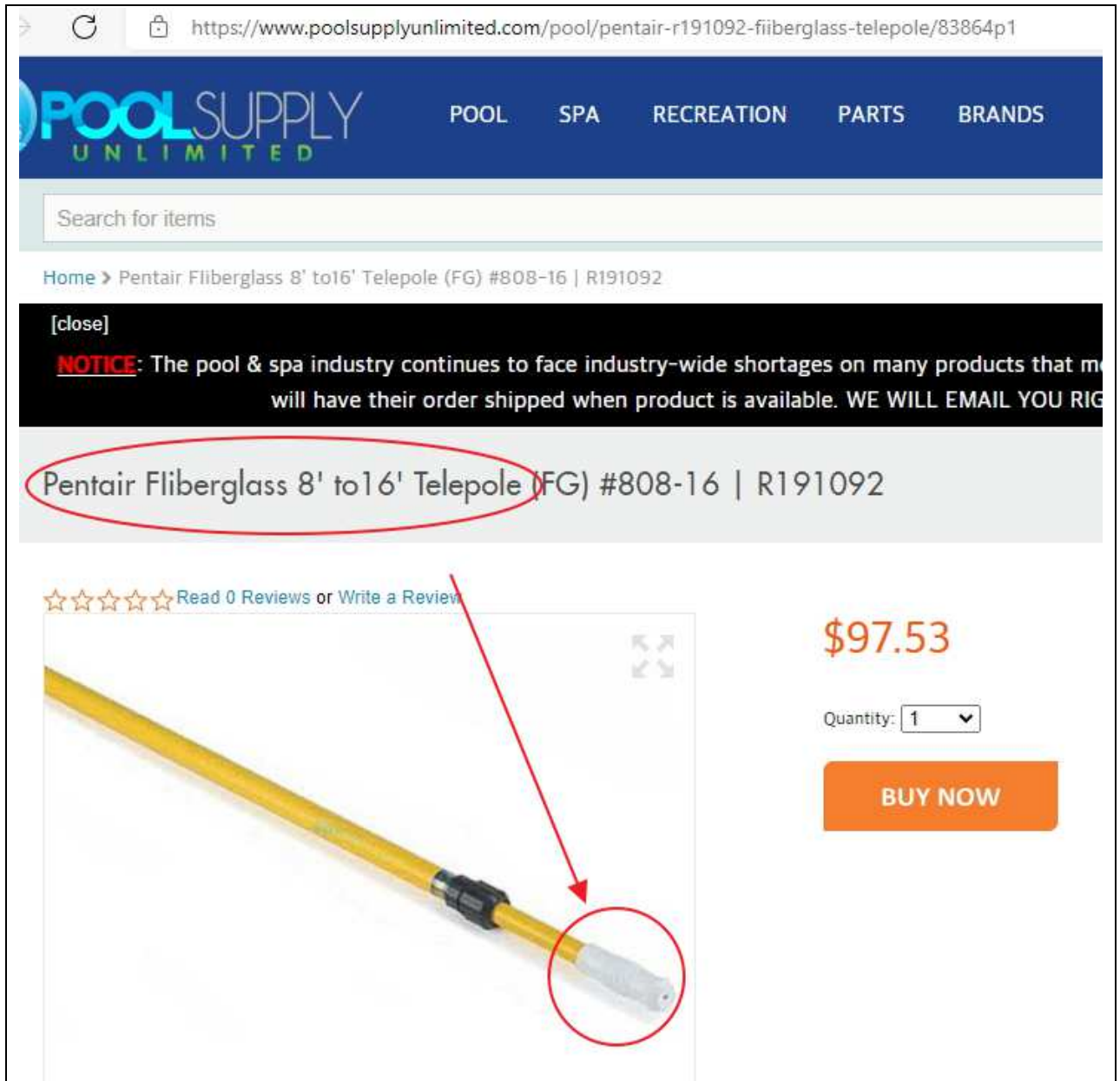
- Another of Defendants of Plaintiff’s recent ‘852 patent (AquaEZ) also uses “bicycle-style handle grips” on their poles of all types:



- 15 • AquaEZ offers an all-fiberglass pole that uses bicycle-style hand grips
16 (from
17 <https://www.bing.com/images/search?q=fiberglass+pool+pole+photograph&qpv=fiberglass+pool+pole+photograph&tsc=ImageHoverTitle&form=IQFRML&first=1>):
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- Perhaps most importantly for the current issues (including whether rubber hand grips and aluminum pole adapters by themselves constitute “prior art”), other **all-fiberglass** poles use both those commodities (handlebar grips and aluminum adapters), as shown in this Pentair pole online page:



b. Defendants’ “Corroboration Evidence” is Conspicuously Missing Any Actual Dated, CORROBORATING Documents or Other Evidence

219. As the Federal Circuit noted in 1999, in the *Finnigan* decision above (citing *Woodland Trust v. Flowertree Nursery, Inc.*, 148 F.3d 1368, 1373, 47 USPQ2d 1363, 1367 (Fed.Cir.1998):

“... the skepticism with which mere testimony of invalidating activity is received is ‘reinforced, in modern times, by the ubiquitous paper trail of virtually all commercial activity. **It is rare indeed that some physical record** (e.g., a written document such as notes, letters, invoices, notebooks, or a sketch or drawing or photograph showing the device, a model, or some other contemporaneous record) **does not exist.**”

(Emphasis added).

220. By way of example in the present case, the Conrads/Skimlite infringers have not produced any evidence that itself is dated, regarding an assembled “A.G. Pro Pole.” They have not produced any contemporary evidence from Mr. Leduc’s alleged 2000-2002 sales/use of the A.G. Pro Pole. Without limitation, such evidence might include:

- photographs
- promotional materials (advertisements, hangtags, etc.)
- related invoices
- receipts
- cancelled checks or credit card payments
- bank statements
- other financial records, etc.

221. In short, Defendants Conrads/Skimlite have not presented any corroborating evidence regarding:

- the alleged sale (or even offering for sale) of A.G. Pro Poles, to SCP or anyone else, at any time (let alone prior to Plaintiff's relevant pole inventions); and/or
- the alleged public use or public knowledge of any A.G. Pro Pole, at any time (let alone prior to Plaintiff's relevant pole inventions).

222. Based on the case law discussed above, this complete absence of any dated documents or similar corroboration (showing the alleged, actual, assembled "A.G. Pro Pole" at the relevant time frame) is a fatal blow to the credibility of Defendants' allegations. In other words, Defendants Conrads/Skimlite have not met their burden to establish that the "A.G. Pro Pole" is prior art with respect to Plaintiff's inventions/applications/claims.

PRAYER

WHEREFORE, Plaintiff Resh prays for relief as follows:

- A. For a judgment declaring that the ‘852 Patent is not invalid;
- B. For a judgment declaring that Defendants’ SkimLite and similar poles (such as those Defendants private-label for third parties) infringe the ‘852 Patent, in view of Defendants’ actions of making, using, selling, offering for sale, and/or importing those poles;
- C. For a judgment declaring that Defendants’ infringement of Plaintiff’s ‘852 Patent has been willful and deliberate;
- D. For a grant of a permanent injunction pursuant to 35 U.S.C. §283, enjoining the Defendants from future acts of infringement;
- E. For an award of damages pursuant to 35 U.S.C. §284, in an amount sufficient to compensate Plaintiff for the foregoing infringement, but in no event less than a reasonable royalty for the use Defendants have made of Plaintiff’s ‘852 Patent inventions, together with interest and costs as fixed by the Court;
- F. For an award of pre-issuance damages pursuant to 35 U.S.C. §154; and
- G. For such other and further relief as the Court deems just and proper.

DEMAND FOR JURY TRIAL

Pursuant to Rule 38(b) of the Federal Rules of Civil Procedure, demand is hereby made for trial by jury on all issues properly triable by jury.

Respectfully submitted,

Dated: March 7, 2022

/s/J. Mark Holland

J. Mark Holland

J. MARK HOLLAND & ASSOCIATES

Attorney for PLAINTIFF RESH

https://d.docs.live.net/365d5d3a52bd96fc/Clients/RESH/L4084_Skimlite-Conrad_2021-06/Pleadings/Complaint-Related/Drafts/2022-03-07_Complaint_FINAL.docx

EXHIBIT A

Plaintiff's '852 Patent



US011141852B2

(12) **United States Patent**
Resh

(10) **Patent No.:** **US 11,141,852 B2**
(45) **Date of Patent:** **Oct. 12, 2021**

(54) **TELEPOLE APPARATUS AND RELATED METHODS**

FOREIGN PATENT DOCUMENTS

(71) Applicant: **Eric V Resh**, Temecula, CA (US)

AU 640080 12/1993
AU 2005200684 B2 8/2010
(Continued)

(72) Inventor: **Eric V Resh**, Temecula, CA (US)

(73) Assignee: **Resh, Inc.**, Murrieta, CA (US)

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(*) Notice: Subject to any disclaimer, the term of this patent is extended or adjusted under 35 U.S.C. 154(b) by 181 days.

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Declaration of Dick Gross, dated Jan. 12, 2017.
Declaration of Jenel Resh, dated Nov. 12, 2015.
Second Declaration of Jenel Resh, dated Nov. 12, 2015.
(Continued)

(21) Appl. No.: **15/708,038**

(22) Filed: **Sep. 18, 2017**

Primary Examiner — Robert J. Scruggs
(74) *Attorney, Agent, or Firm* J. Mark Holland & Associates; J. Mark Holland; Auson Adnan

(65) **Prior Publication Data**

US 2018/0009099 A1 Jan. 11, 2018

(57) **ABSTRACT**

Related U.S. Application Data

(63) Continuation-in-part of application No. 13/844,561, filed on Mar. 15, 2013, and a continuation of (Continued)

(51) **Int. CL**
B25G 1/04 (2006.01)
B25G 3/18 (2006.01)

(52) **U.S. CL**
CPC **B25G 1/04** (2013.01); **B25G 3/18** (2013.01)

(58) **Field of Classification Search**
CPC B25G 1/102; B25G 1/10; B25G 1/105; B25G 1/100; B25G 1/01; B25G 1/04; (Continued)

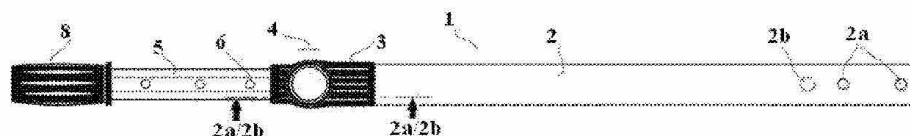
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(Continued)

An improved telepole device having attachment means for attaching swimming pool cleaning, and other tools. The improved telepole device preferably includes an inner tube which freely slides within an outer tube, and a locking device to temporarily secure the inner tube in a desired position within the outer tube. A preferred lightweight design may be at least partially hollow along the length of the tube(s), and durability may be provided by inner/reinforcement wall(s) that extend across the hollow portion(s) of one or both of the tubes. On the end of the outer tube through which the inner tube slides/extends is a collar element attached thereto and comprised of a locking device having a detent mechanism for "locking" the inner tube in place within the outer tube. Preferably, the collar's opening and the profile of the inner tube have one or more sides that, due to their relative position with respect to each other, can prevent the inner tube from rotating within the collar. Further, the inner tube preferably has a series of holes along its length which are positioned to receive a pin element of the detent mechanism. Further, the end of the outer tube opposite the collar preferably has attachment holes configured to receive attachable and detachable swimming pool cleaning tools, and an additional set of holes that allow water to drain from the outer tube while a tool is attached.

24 Claims, 16 Drawing Sheets



US 11,141,852 B2

Page 2

Related U.S. Application Data

application No. 13/624,702, filed on Sep. 21, 2012, now Pat. No. 9,764,458.

(60) Provisional application No. 61/538,074, filed on Sep. 22, 2011.

(58) Field of Classification Search

CPC B25G 3/18; B25G 3/20; F04H 3/16; E04H 4/00; F16D 1/10; F16B 7/10; A01K 75/00
See application file for complete search history.

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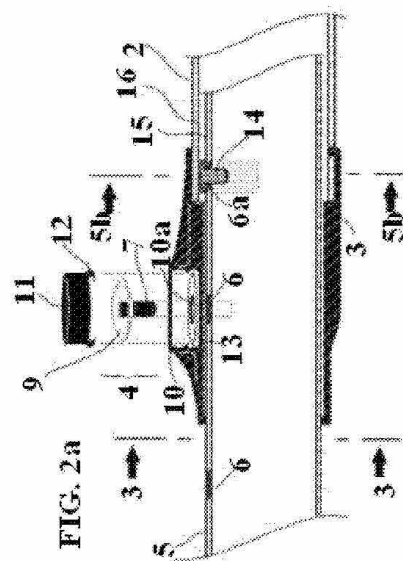
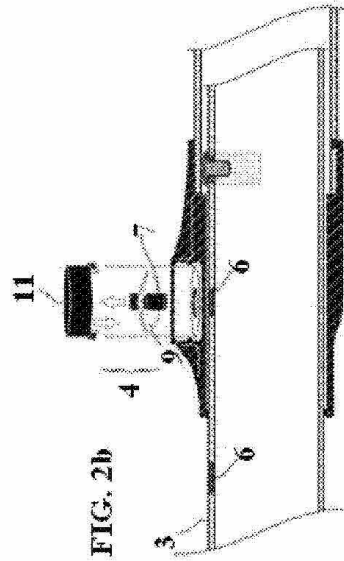
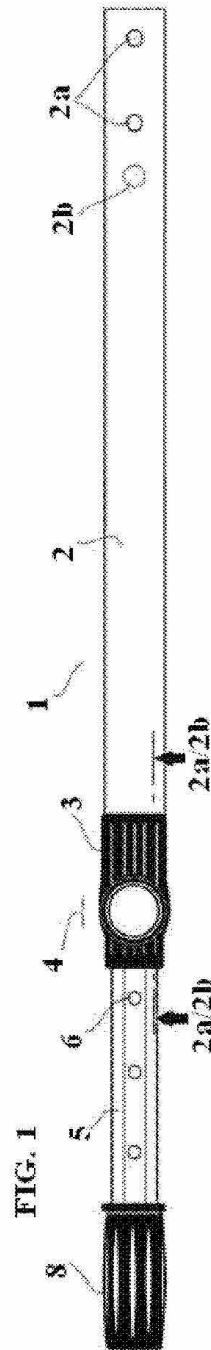
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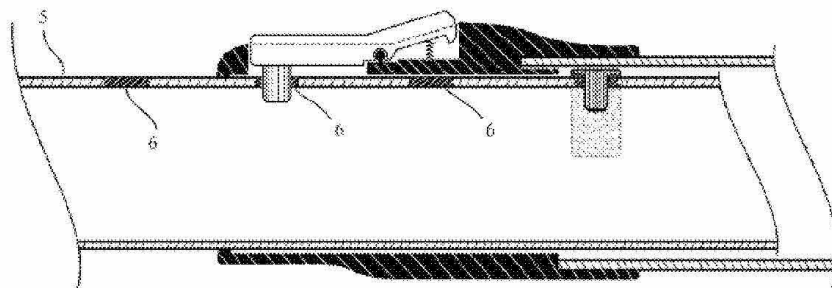


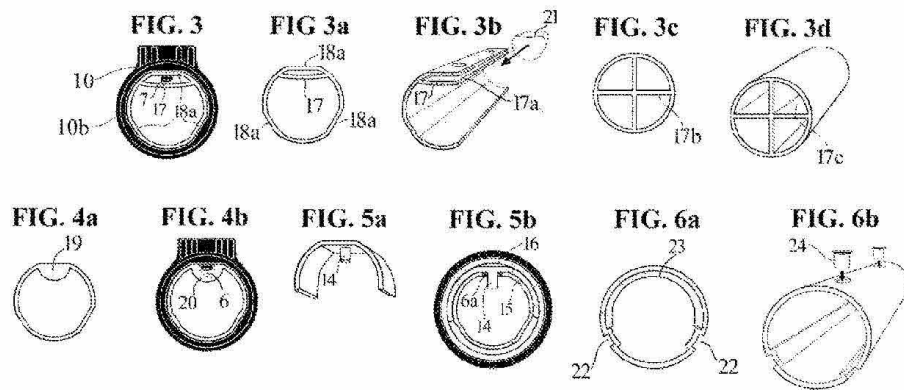
FIG. 2c

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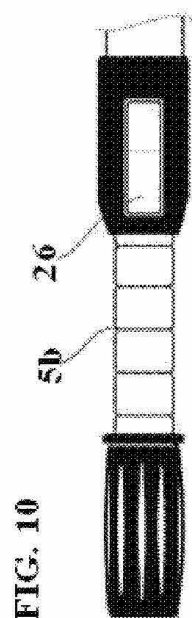
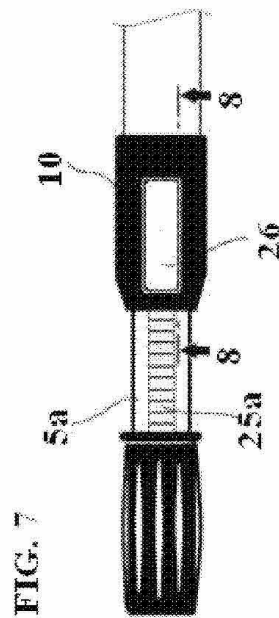
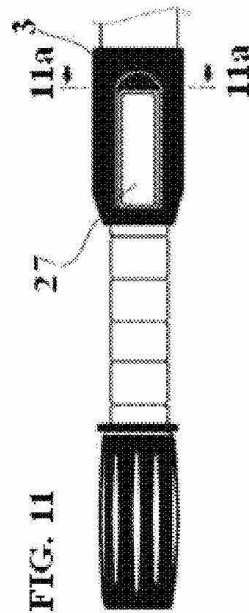
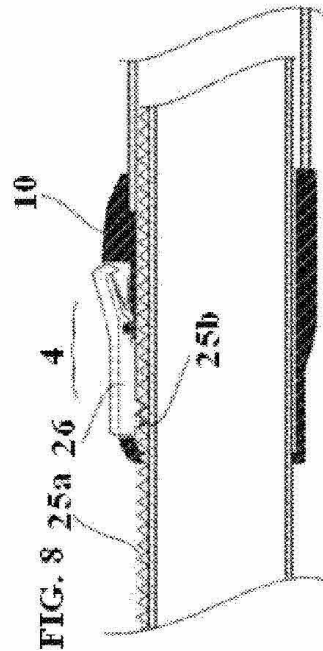


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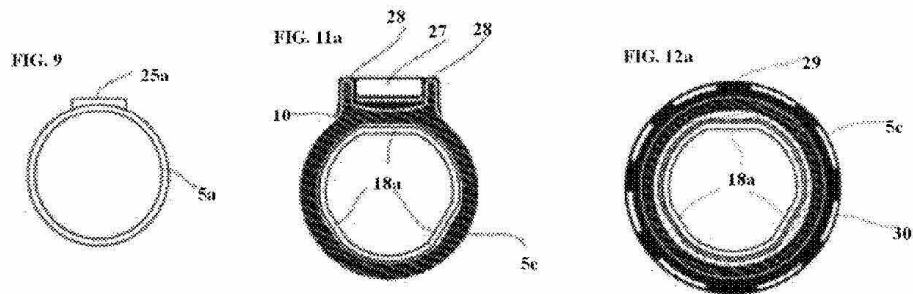


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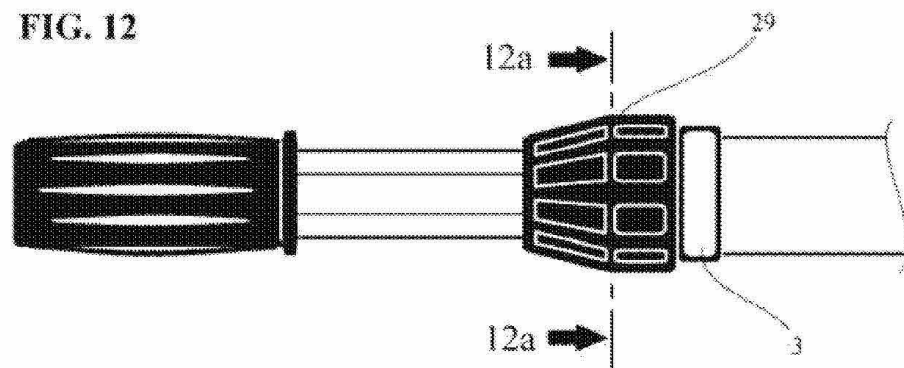
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FIG. 12



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FIG. 12b

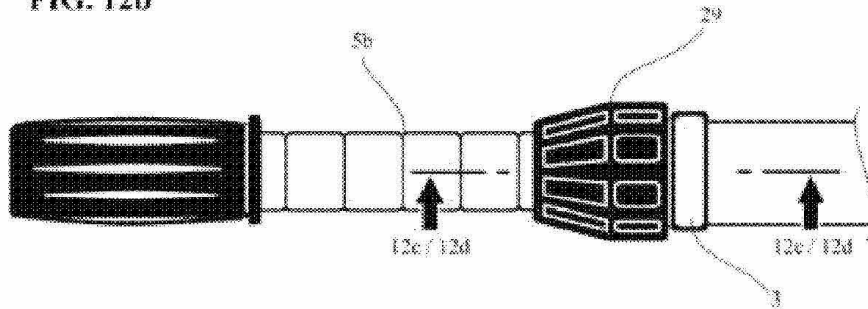


FIG. 12c

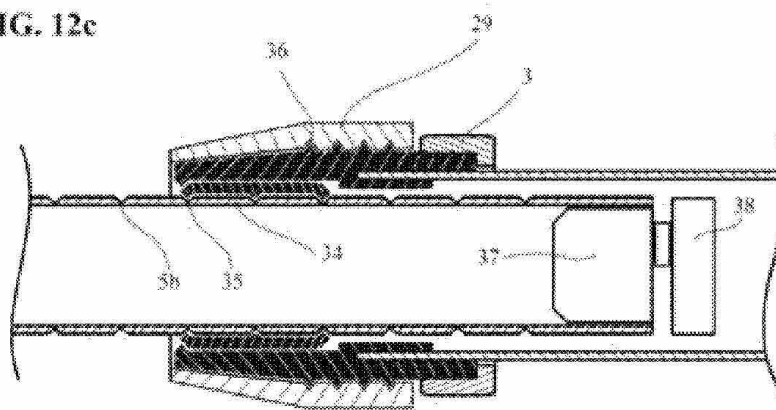
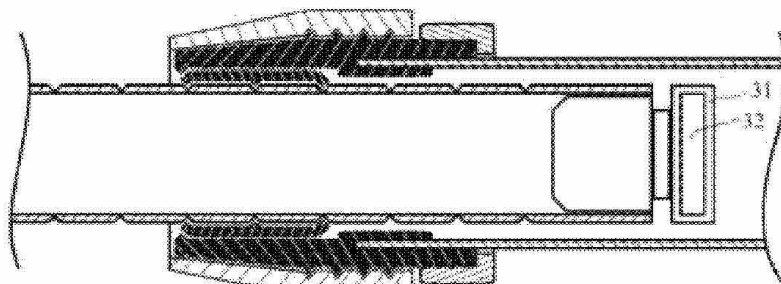


FIG 12d



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FIG. 13a

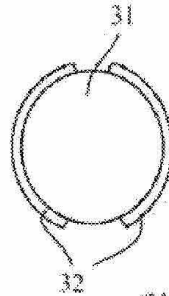


FIG. 13b

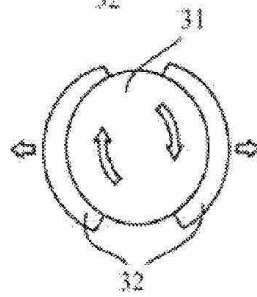


FIG. 13c

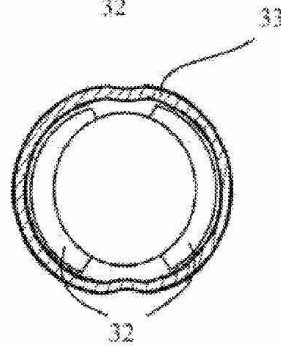
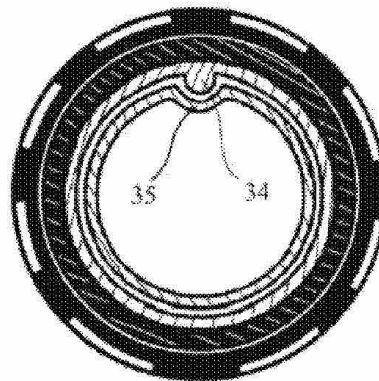


FIG. 14



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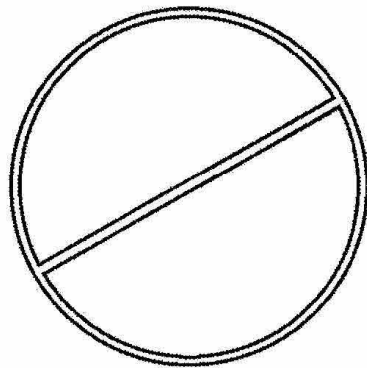


FIG. 15a

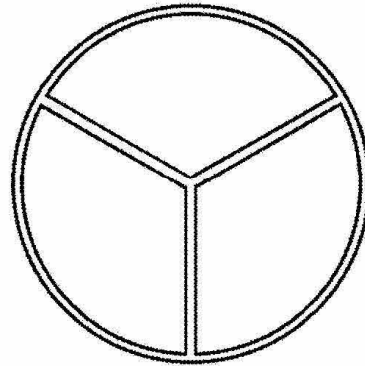


FIG. 15b

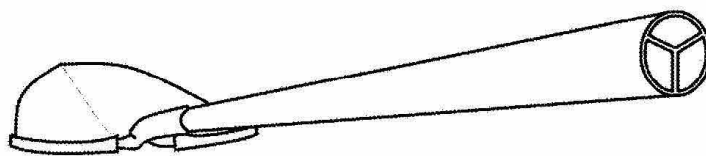


FIG. 16a



FIG. 16b

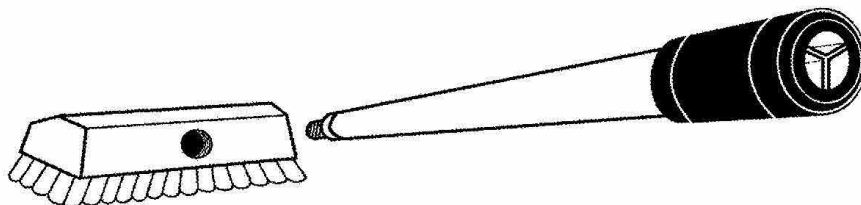


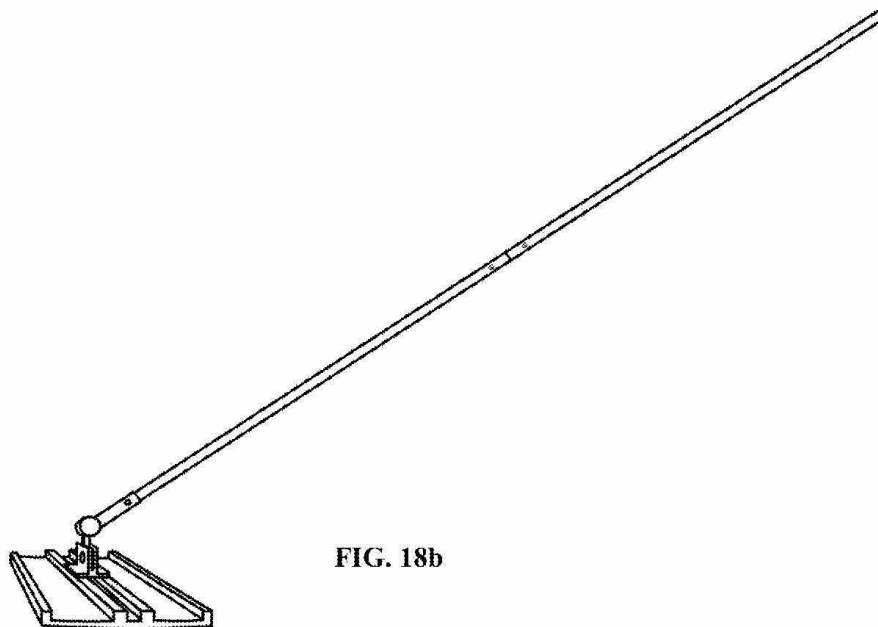
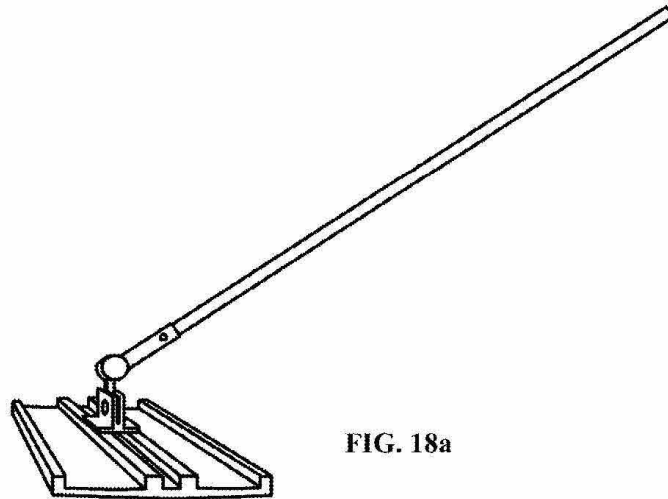
FIG. 17

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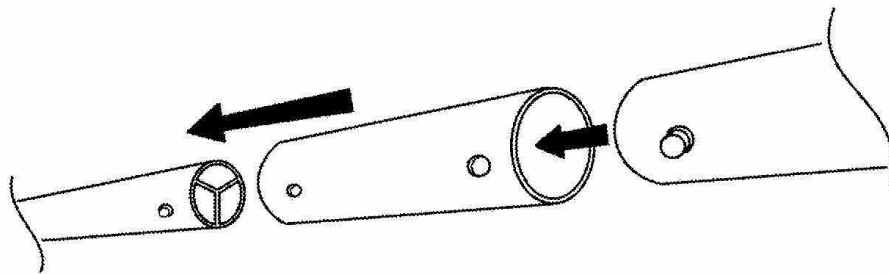
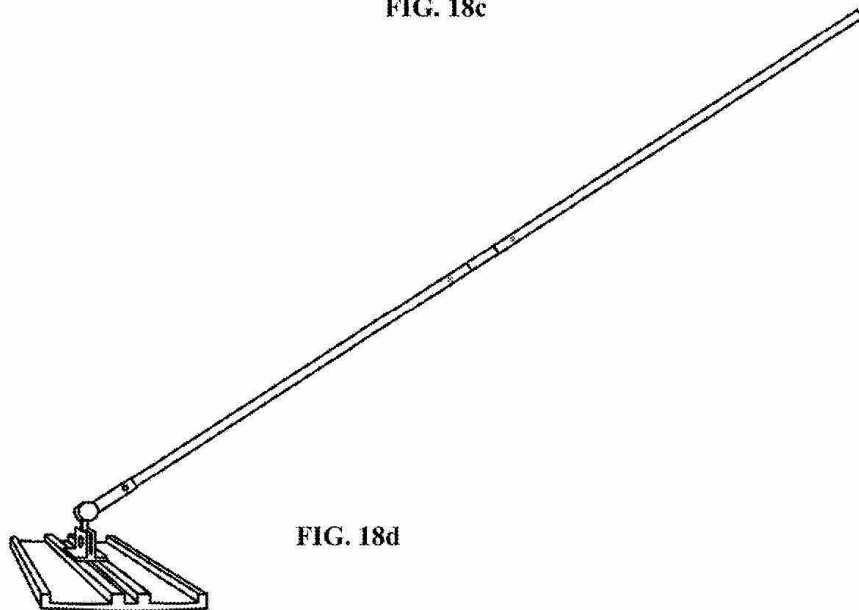
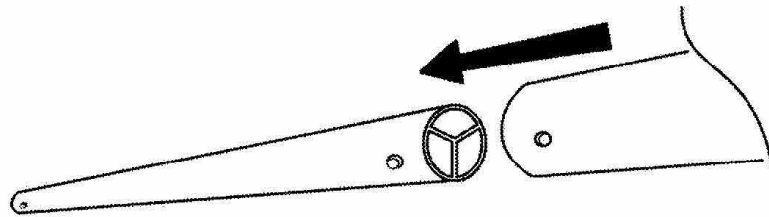


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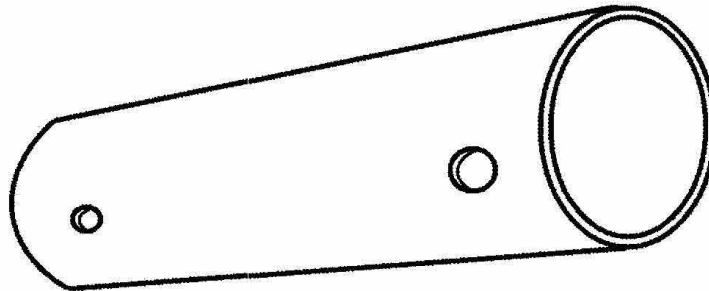


FIG. 19a

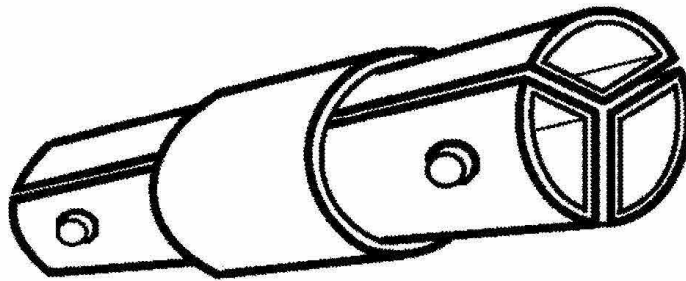


FIG. 19b

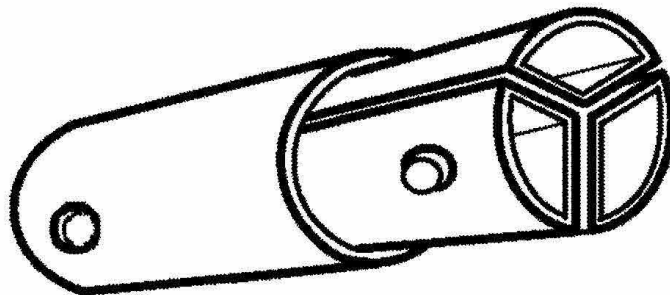


FIG. 19c

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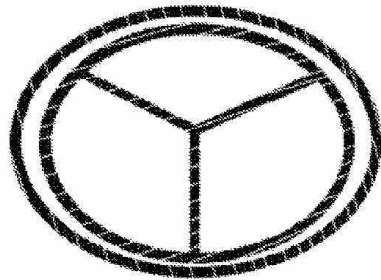


FIG. 22

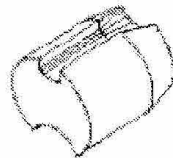


FIG. 23a



FIG. 23b

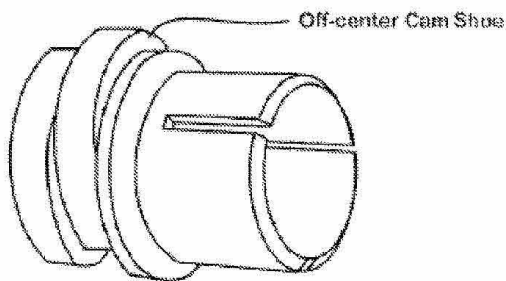


FIG. 24a

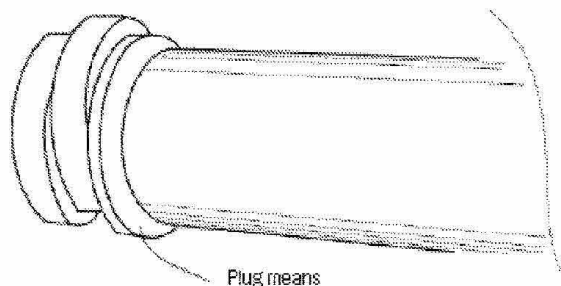


FIG. 24b

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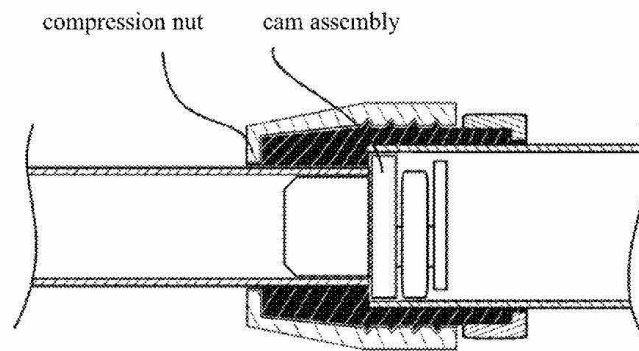


FIG. 24c

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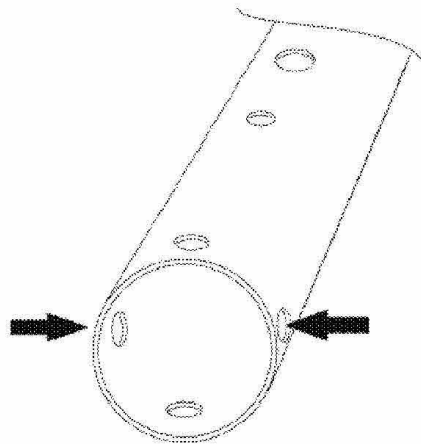


FIG. 25

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TELEPOLE APPARATUS AND RELATED METHODS

CROSS-REFERENCE TO RELATED APPLICATIONS

This application claims priority to U.S. Provisional Application Ser. No. 61/538,074, filed Sep. 22, 2011, the disclosure of which is incorporated herein by reference in its entirety.

This continuation-in-part application claims priority to U.S. patent application Ser. No. 13/624,702, filed on Sep. 21, 2012 and Ser. No. 13/844,561 filed on Mar. 15, 2013, both of which were based on U.S. Provisional Application Ser. No. 61/538,074, filed Sep. 22, 2011, the disclosures of which are incorporated herein by reference in their entirety.

FIELD OF THE INVENTION

This invention relates to devices for cleaning swimming pools and similar things, and more specifically is directed to apparatus and methods involving an improved telescopic pole useful for (among other things) attachment to swimming pool cleaning tools.

BACKGROUND OF THE INVENTION

Many prior art tools are made with extendable handles which serve at least three key functions, among others: they provide a means for a user to grip the tool, they increase extension and reach, and they create leverage. For example, a typical shovel has a pan-shaped head for digging and/or moving dirt. An extendable handle attached to the shovel head allows a user to work in a standing position and keep their hands at a reasonable distance from the work being done (rather than bending/kneeling/etc. down to get close to the work), and it further enables a user to create leverage when prying or scooping with the shovel. An array of hand tools such as hammers, rakes, brushes, scrapers, mops, concrete finishing tools, etc. use extendable handles for similar reasons.

Some of the problems with prior art extendable handles, however, are associated with the failure of the handles to perform adequately during use. It is not uncommon for wooden handles on shovels and other leveraging tools to break under the normal pressure that occurs during use. Sometimes manufacturers use harder woods to reduce such breakage; however, hard woods tend to weigh more than softer woods and consequently, make the tools heavier. Handles made of metal tubes are often used, but these may likewise be heavy or bend when under pressure. It is also common for handles on shovels, rakes, brooms, etc. to be made from synthetic materials such as plastic or fiberglass; such handles likewise may be heavy, lack strength or fail for other reasons.

One such area where extendable handles are very useful, if not essential, is for use with swimming pool cleaning tools (so that a user does not have to get in the water when cleaning a pool or similar water feature, but can reach the water from a standing position on a deck/dry place). A wide variety of tools and processes have been developed for use with swimming pool cleaning tools to clean pools and similar things (fountains, spas—both above and below ground, fish ponds, etc.). Among those devices and methods are devices that are commonly referred to as “telepoles”.

Other uses for such “telepoles” include window washing tools, paint rolling tools, and concrete spreading/finishing tools.

Specifically within the concrete industry, telescopic poles and/or extending handles are attached to trowels and floats for finishing large/wide/etc. slabs of concrete that could not otherwise be reached without the user having to step in the wet concrete. With extendable/telescopic handles, tubular sections of handle can be attached one after the other to reach 20 to 30 feet, or even more. However, handles of this length may easily sag in the middle between the user and the tool, and manufacturers have attempted to reduce sagging by increasing the diameter and thickening the walls of the tubular sections. In doing so, they use a greater amount of material (typically aluminum within the concrete industry) and, consequently, make the handles heavier and more difficult to work with.

Commonly, telepoles utilize two separate lengths of tubing (configured so that one slides within the other to adjust the overall length of the telepole, and a mechanism or device which “locks” the tubes together at a desired position (so that, while so locked, they do not move/slide with respect to one another). That desired position (in effect, the selected length of the telepole) depends on a number of factors, such as the depth of the pool, the strength of the person using the tool, the particular tool being used, etc. Further, a selected telepole or handle length may be made even longer by adding one or more additional lengths of tubing in a series so that each length contributes to an overall desired length.

Typically, telepole tubing is made from aluminum, fiberglass, or some other light, yet relatively strong material. Generally, in telepoles used for attaching swimming pool cleaning tools, the lower tube (nearest the attached tool) is the “outer” tube, and the upper tube reciprocates within that lower tube. The lower/outer tube typically has a collar-like element at one end and a series of holes near and/or along a portion of the opposite end. The collar means provides a finished end of the tube which receives the inner/upper tube and also serves as a guide to keep the inner/upper tube well-positioned/aligned as it slides within the outer tube. The holes along the opposite end commonly serve several purposes, such as providing attachment means for attaching swimming pool cleaning tools and allowing water to enter and exit the tube, so that the tool will fill with water to some degree during use (making it easier to keep the tool in contact with the bottom of the pool, instead of having it float up off the bottom) and the water can drain from the tube upon removal of the pole/tool from the water.

Typically, a first set of holes is positioned closest to the end of the outer tube (approximately one inch from the end of the pole), consisting of two holes placed on opposite sides of the tube (180 degrees from each other about the tube’s circumference). A few inches farther away from the “tool end” of the pole/tube, a second set of two holes commonly is positioned similarly about the tube’s circumference, and a third set may be even further from the “tool end” of the pole. The first set of holes nearest the end of the tube are positioned and configured to allow easy attachment and removal of pool cleaning tools such as leaf nets, brushes, vacuum heads, and the like, by using springy plastic “V-clips” having button-like ends that extending outwardly through the first set of holes (typically after also extending from the interior of the tool through corresponding holes in the tool sidewall). Thus, the first set of holes typically act as receiving holes for receiving V-clip buttons, where the V-clip is operably positioned on the attachment end of a pool cleaning tool.

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The second set of distally located holes are commonly used for mounting various tools such as lifesaving rescue hooks that require more permanent attachment to the telepole. A third set of holes may be positioned similarly to the first and second sets about the tube's circumference and located even farther from the tube's end than the first or second sets of holes, to enable water to more easily enter into (and/or drain from) the interior of the outer pole/tube.

In many prior art telepoles used for attaching pool cleaning tools, the inner/upper tube is of similar length to the outer tube and has a profile with a smaller circumference than that of the outer tube, in order to permit sliding of the inner tube within the outer tube. The inner/upper tube commonly has a gripping element mounted on one end which provides a gripping surface for a user to grasp the end of the telepole. The gripping element also serves to prevent the inner tube from sliding completely into the outer tube and becoming ungraspable. The opposite end of the inner tube is received by the collar means of the outer/lower tube. Commonly, the end of the inner/upper tube that reciprocates within the outer tube has a cam-like element which serves as an internal pressure locking device to "lock" the inner tube in place within the outer tube.

Essentially, when the inner/upper tube is rotated so that the cam element is aligned with the profile of the inside walls of the outer tube, the inner tube can freely slide within the outer tube (since the cam element does not engage with or apply pressure on the inside walls of the outer tube in this position). However, when the user sufficiently further rotates the inner tube with respect to the outer tube, the inner tube's cam element becomes misaligned with the profile of the inner walls of the outer/lower tube, and the cam element applies a pressure against the inner walls of the outer tube and "locks" the inner tube in place within the outer tube. In this way, the inner tube may be manipulated and positioned (and locked) at a desired position along the length of the outer tube, thereby selectively setting the length of the telepole device.

Other prior art telepole devices utilize an external locking device in which a portion of the collar element on the outer tube acts as a compression fitting. In these devices, an end of the collar element is elongated with male threads and is sometimes capable of expanding and contracting across its diameter. A corresponding female threaded compression ring fits around the male threaded end, and a compression gasket fits at least partially between the male end and the inner tube. The compression ring usually has gripping textures to add grip for a user's hands which may be wet and slippery from pool water. The telepole is locked into a desired position by twisting the compression ring to tighten it to the collar and simultaneously squeezing the gasket against the outside surface of the inner tube. With sufficient pressure, the telepole will generally stay "locked" in the desired position. Loosening the compression ring reduces pressure on the gasket and allows the inner tube to slide freely again.

Further examples of prior art telepole locking devices include U.S. Pat. No. 5,729,865, which has a sliding locking assembly for retaining the tubes in position relative to one another; and U.S. Patent Application No. 2006/0230581, which has rotatable locking mechanism wherein rotation of a locking segment on the outer tube creates frictional locking engagement with the inner tube.

Other prior art telepoles used to clean swimming pools have both internal and external locking devices, and some even have multiple locks of either type and/or a combination of the two types. For example, some have three tubes, each

with a profile of a different circumference such that they fit within each other: an outer tube with an external locking device and tool attachment holes, a middle tube with an external locking device, and an inner tube with an internal locking device and a grip.

The various prior art telepole configurations discussed above have shortcomings. Among other things, the cam element's locking ability may lessen or diminish over time. Repeated use results in wear and tear on the cam and/or the inner walls of the outer tube, causing the contact surfaces of the cam and inner walls to become rough and/or out of round. As a result, a cam may lose its ability to become misaligned with the inner walls of the tube and as a consequence the inner and outer tubes cannot be "locked" in place with respect to each other. In this situation, the cam may also spontaneously align itself with the inner walls of the tube, thus permitting the tubes to readily slide past one another and causing the telepole to collapse/slip when pressure is applied to it during cleaning. The tendency of the cam to spontaneously align with the inner walls may also result in tool failure and even poses the risk of the user falling into the pool if the telepole suddenly collapses while the user is applying pressure to it.

Further, prior art telepoles are prone to bending/becoming deformed during use due to the amount of pressure/weight applied to them by a user. In time, the tubes may no longer be true (aligned with each other). When this happens, the telepole's internal locking devices tend to jam in the areas where the tubes are out of round and/or not straight, resulting in complete failure of the telescopic feature of the pole. In other words, and among other things, poles in this condition may not be extendable or adjustable in length.

Additionally, prior art external locking devices are subject to wear and tear in prior art telepole devices. Over time, the contacting surfaces can wear and/or become smooth and have less friction, which greatly reduces the ability of the compression ring to hold the inner tube in place. In some cases, this allows the inner tube to slide within the outer tube even when the outer ring is tightened to its maximum position. The inner tube may also undesirably rotate when the telepole is in use, thus reducing the user's ability to maneuver the attached cleaning tools as desired. Furthermore, telepoles having only an external locking device have the additional problem of water filling the inner tube during use since there is no cam to plug the end of the inner tube. This can make the telepole very heavy and less maneuverable (as mentioned above, some water inside the tube(s), such as in the lower tube, can be helpful in using the tool, but too much water can be a substantial problem or inconvenience in using the tool). Even further, new prior art telepoles having new compression rings have been known to undesirably permit inner tube rotating and/or sliding within the outer tube.

Attempts to remedy these known issues/problems have led to even more problems. One such attempt increases the tightening force of the compression ring, but it can make the compression ring very difficult to loosen and painful to the user's hands to twist the compression ring either to tighten or loosen it.

The issues described above are common among prior art telepoles used to clean swimming pools and have led to the creation of telepoles with both internal and external locking devices, wherein either device may serve as a backup for the other. The Elliptilock pole made by Skimlite is a further attempt to avert the problems discussed above. Both the inner and outer tubes of an Elliptilock pole have similar elliptical profiles, with the inner tube being slightly smaller

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than the outer tube; and the inner tube sliding freely when its profile is aligned with the profile of the outer tube. A slight twist from the user causes the inner tube to become wedged within the outer tube and "locked" in place. A twist in the opposite direction releases the inner tube so that its profile is aligned with that of the outer tube and it may freely slide within the outer tube. Over time, however, the areas of contact between the tubes become rough and develop friction, and the inner tube may become jammed within the outer tube. This is especially common when the telepole bends or changes shape due to various pressures placed upon it during use.

Further, "telepoles" or extendable handles used in other applications are not necessarily suitable for use in swimming pools. In window washing, painting, or marine applications, for example, telepole configurations are basically the opposite of those needed for cleaning swimming pools. The grip discussed above is mounted on the outer tube, and the inner tube or tubes extend outward from the user, with the tool mounted on the narrowest/inner tube of the telepole. Such configurations are useful/practical when using a telepole to reach upward or overhead as the highest portions of the telepole are also the lightest. However, swimming pool cleaning generally involves a lateral reach (for above-ground pools) or downward reach (for in-ground pools) which is easier to perform with the heavier part of the telepole extending away from the user. Furthermore, telepoles such as those used for window washing or painting would be especially impractical as the locking devices would be almost constantly under water, hindering the ease and ready adjustment of the telepole's length needed to clean a swimming pool.

Also, the locking devices of telepoles used in other applications are unsuitable for swimming pool cleaning applications. For instance, external locking devices, such as those found on telepoles used for window washing, painting, or marine applications, tend to make pool cleaning difficult as they can easily catch on the edge of a pool or other objects when the telepole is being used, among other things. For example, the Mr. Long Arm Pole (shown in U.S. Pat. No. 5,220,707) has an external locking device with a button that activates a detent mechanism to engage and release the inner tube of the telepole, but is not suitable in swimming pool applications for a number of reasons. Among other things, it is configured the opposite of what is desirable/useful for cleaning swimming pools (i.e., the lighter parts of the pole extending away from the user). Further, the Mr. Long Arm pole is sealed at both ends by a grip on the outer tube end and a threaded adapter on the inner tube end, and therefore is unable to accommodate the commonly-used V-clips of most swimming pool cleaning tools. Moreover, its inner tube is unsealed on the end opposite the threaded adapter (the end that is inserted into the outer tube) and where a series of holes that receive the detent mechanism of the locking device are located along the inner pole's length. These openings in the inner tube would allow water to enter the pole when it is placed in a pool, etc. and make the telepole awkward and cumbersome to maneuver and control during use. Additionally, since the grip is mounted on the end of the outer pole, the detent mechanism would almost always be underwater during use, and adjusting the pole's length would inconveniently require a user to withdraw some or all of the pole from the pool.

Other prior art telepoles have lever-activated compression fittings. Devices having a lever fitting are suitable for certain applications in which a user does not need to adjust his grip/move his hand position from the wider tube to the

narrower tube. However, swimming pool cleaning commonly requires a user to repeatedly pass his or her hands back and forth over the locking device (to/from one tube to the other) during cleaning in order to be able to adjust his/her reach, get desired leverage on the tool, etc. Therefore, bulky and/or angular levers that are commonly used on telepoles for other applications may obstruct a user's hand from easily passing back and forth over the lever and thus reduce a user's ability to effectively clean a swimming pool. Furthermore, bumping a lever may cause pain or even injury to a user, especially if his or her hands have been wet for some time or exposed to pool chemicals. Even further, bumping the lever with one's hands, an object, or even against the pool deck may cause the lever to release unintentionally.

Still other problems occur with prior art as the inner tube may easily be overextended, especially among telepoles used for cleaning swimming pools. When overextension occurs, the inner tube can slide completely out of and separate from the outer tube. As a result, the outer tube, along with the attached cleaning tool, can sink to the bottom of a pool and be difficult to retrieve. Reassembling the telepole can be difficult and especially inconvenient if the inner tube has a cam locking device mounted on it since reassembly of the telepole requires that the cam's shoe, the inside tube and outside tube all must be aligned with each other for them to slide back together.

Additional problems arise with grips that fail to remain tightly attached to the end of the inside tube. While grips are generally designed to fit very tightly, they still can be knocked off the end of the inside tube if that tube slides too far or too quickly into the outside tube. When this happens, the inside tube may pass completely out the other end of the outside tube, or at least past the compression ring (on tubes with compression locks). Consequently, a user must reassemble nearly all of the telepole in order to use it again.

OBJECTS AND ADVANTAGES OF THE INVENTION

It is, therefore, an object of my invention to provide an improved telepole device having attachment means for attaching swimming pool cleaning tools. The improved telepole device preferably includes an inner tube which freely slides within an outer tube, and a locking device to temporarily secure said inner tube in a desired position within the outer tube. In a preferred embodiment, both the inner and outer tubes are fabricated from aluminum or a similar material that is both lightweight and durable, and most of the inner tube's length can slide into and extend out from one end of the outer tube. A preferred lightweight design may be at least partially hollow along the length of the tube(s), and durability may be provided by inner/reinforcement wall(s) that extend across the hollow portion(s) of one or both of the tubes. Preferably, one end of the inner tube has a grip mounted thereon which makes that end easy to grasp/grip and also prevents the inner tube from sliding entirely within the outer tube. On the end of the outer tube through which the inner tube slides/extends is a collar element attached thereto and comprised of a locking device having a detent mechanism for "locking" the inner tube in place within the outer tube. Additionally, the inner tube preferably has a distinct profile that matches the opening of the collar element through which it extends. Preferably, the collar's opening and the profile of the inner tube have one or more sides that, due to their relative position with respect to each other, can prevent the inner tube from rotating within the collar. Further, the inner tube preferably has a series of

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holes along its length which are positioned to receive a pin element of the detent mechanism. The pin element is preferably attached to a spring element and held in place by a housing which is formed into the collar. In its normal "resting" position, the spring pushes the pin towards the inner tube such that, when the pin is aligned with one of the holes in the inner tube, the pin sits in the hole and "locks" the inner tube in position so that it cannot slide/rotate within the outer tube or collar. Also preferably, within an upper portion of the housing above the pin is a button that, when depressed, forces the spring to reverse itself from its normal "resting" position and consequently lifts/releases the pin from its normal position in the housing so that the inner tube may be moved to a new position. Further, the end of the outer tube opposite the collar preferably has attachment holes configured to receive attachable and detachable swimming pool cleaning tools, and an additional set of holes that allow water to drain from the outer tube while a tool is attached.

A further object of my invention is to provide a telepole for cleaning swimming pools, with a detent mechanism as described above, and characteristics that prevent water from entering the inner tube during use so as to preserve the inner tube's buoyancy. In a preferred embodiment, a barrier is formed or otherwise provided inside the inner tube along its length and adjacent to the length-selection holes, to prevent water that may flow through those holes from entering the bulk of the inside portion of the inner tube. In addition, the telepole's buoyancy preferably is further maintained by a plug which is preferably mounted into or otherwise on the end of the inner tube that is opposite the gripping portion. The plug prevents water from entering the inner tube through its end. The end of the outer tube opposite the collar preferably has holes configured to receive attachable and detachable swimming pool cleaning tools.

Another object of my invention is to provide a telepole for cleaning swimming pools, with a compression device to "lock"/temporarily secure the inner tube within the outer tube at a desired position along the inner tube's length. The compression device and the inner tube preferably have corresponding detent-like contact surfaces that engage and disengage each other when the compression device is tightened and loosened, respectively, and enable a user to change the length of the telepole as needed.

Still another object of my invention is to provide a stronger telepole for cleaning swimming pools, including an inner tube that slides within an outer tube and can be "locked"/secured in various places along the length of the inner tube. The inner tube has one or more additional inner/reinforcement walls along its length to add strength and to help keep the inner tube true and round.

Yet another object of my invention is to create a telepole for cleaning swimming pools, including an outer tube having a collar on one end, the collar having a central opening through which an inner tube extends. The collar's opening and the profile of the inner tube have one or more sides keyed to each other such that, due to their shapes, the inner tube cannot rotate within the collar. The collar preferably is configured to include a compression device to lock the inner tube at any given area along its length.

Still another object of my invention is to provide a telepole assembly and related methods for cleaning swimming pools, including an inner tube and an outer tube, and further including a lever-action compression device that is easy on a user's hands. In one of many potential embodiments, the lever is installed in a housing formed within a collar that is mounted on the end of an outer pole. The

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housing is configured to prevent the lever's edges or corners from protruding in such a way that they might be accidentally bumped by a user's hands or some other object that may disengage the lever. The inner tube preferably has a distinct profile that matches and/or is keyed to the opening of the collar, the compression device, or both, through which it extends. Among various embodiments, the collar's opening, the compression device, or both, and the profile of the inner tube can have one or more flat sides that, due to their shapes, prevent the inner tube from rotating within the collar. The inner tube preferably has a plug in its end furthest from the grip, said plug preserving buoyancy by preventing water from entering the inner tube.

Yet another object of my invention is to provide a telepole for cleaning swimming pools, including an inner tube and an outer tube, in which the outer tube is made with a profile that is not perfectly round, and the inner tube has a locking device mounted into it. The locking device is activated when a user twists the inner tube and causes the locking device to wedge itself against the uneven inner walls of the outer tube; said locking device being deactivated by a twist in the reverse direction. Other of the many embodiments of the invention would include reversing the parts just described, so that the inner tube is not perfectly round so that twisting of the inner tube with respect to the outer tube will result in a temporary fixed engagement of the two tubes with each other.

Still another of the many embodiments of the invention would include an inside tube and an outside tube having profiles similar to each other, with neither profile being perfectly round. The inside tube further has one or more additional/inner reinforcement walls along its length to add strength and help the inside tube retain its shape and remain true and straight. The inside tube slides within the outside tube and can be extended out of the outside tube to give the telepole additional length. A user can "lock" the telepole at an overall desired length by rotating the inside tube within the outside tube until the sides of both tubes, being slightly out of round, wedge themselves against each other. Similarly, a user can "unlock" the telepole by rotating the inside tube in the reverse direction, and subsequently readjust the overall length of the telepole. A plug may further be added to the inside tube to prevent it from filling with water during use in a pool or similar water feature.

BRIEF DESCRIPTION OF THE DRAWINGS

FIG. 1 is a plan view of a preferred embodiment of a telepole constructed in accordance with the teachings of the invention;

FIGS. 2a and 2b are sectional views taken along Line 2a/2b-2a/2b of FIG. 1, showing an exploded view of the detent mechanism of the preferred embodiment;

FIG. 2c is an alternative embodiment of the detent mechanism shown in FIGS. 2a and 2b;

FIG. 3 is a sectional view taken along Line 3-3 of FIG. 2a;

FIG. 3a is a profile view of the inner tube of the preferred embodiment;

FIG. 3b is a dimensional view of a portion of the section taken along Line 2a/2b-2a/2b of FIG. 1;

FIG. 3c is an alternative embodiment of FIG. 3a;

FIG. 3d is a dimensional view of FIG. 3c;

FIG. 4a is an alternative embodiment of FIG. 3a;

FIG. 4b is an alternative embodiment of FIG. 3;

FIG. 5a is a dimensional view of a saddle bushing used in the preferred embodiment;

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FIG. 5b is a sectional view taken along Line 5b-5b of FIG. 2a;

FIG. 6a is an alternative embodiment of FIG. 3a;

FIG. 6b is an alternative embodiment of FIG. 3b;

FIG. 7 is a partial view of an alternative embodiment of FIG. 1;

FIG. 8 is a sectional view taken along Line 8-8 of FIG. 7;

FIG. 9 is a profile view of the inner tube of FIG. 8;

FIG. 10 is an alternative embodiment of FIG. 7;

FIG. 11 is an alternative embodiment of FIG. 7;

FIG. 11a is a sectional view taken along Line 11a-11a of FIG. 11;

FIG. 12 is an alternative embodiment of FIG. 11;

FIG. 12a is a sectional view taken along Line 12a-12a of FIG. 12;

FIG. 12b is an alternative embodiment of FIG. 12;

FIG. 12c is a sectional view taken along line 12c/12d-12c/12d of FIG. 12b;

FIG. 12d is a sectional view taken along line 12c/12d-12c/12d of FIG. 12b;

FIGS. 13a and 13b are front views of an inner tube's internal locking device;

FIG. 13c is a front view of FIGS. 13a and 13b, within an outer/lower tube;

FIG. 14 is an alternative view of FIG. 12a;

FIG. 15a is a profile view of a tubular handle having an inner/reinforcement wall, in accordance with an embodiment of the present invention;

FIG. 15b is an alternative embodiment of FIG. 15a;

FIG. 16a is an elevation view of a tubular handle having inner/reinforcement walls attached to a tool, in accordance with an embodiment of the present invention;

FIG. 16b is similar to FIG. 16a, having a gripping portion on the end of the tubular handle;

FIG. 17 shows a tubular handle similar to that shown in FIG. 16b being detached from a tool;

FIG. 18a is an elevation view showing a quick-release device being used with a tool and handle in accordance with an embodiment of the present invention;

FIG. 18b is similar to FIG. 18a, wherein the tubular handle is attached to another similar tubular handle to increase the overall length of the handle configuration of the device;

FIG. 18c shows the attachment of two similar tubular handles together;

FIG. 18d is similar to FIG. 18b, wherein the similar tubular handles are joined together using a coupling device;

FIG. 18e shows the attachment of two similar tubular handles together using a coupling device in accordance with an embodiment of the present invention;

FIG. 19a shows a coupling device in accordance with an embodiment of the present invention, wherein the end(s) of the coupling device are female and receive a male end of a tubular handle;

FIG. 19b shows a coupling device in accordance with another embodiment of the present invention, wherein the end(s) of the coupling device are male and are received into a female end of a tubular handle;

FIG. 19c shows a coupling device in accordance with yet another embodiment of the present invention, wherein the coupling device has both a male and female end which matingly engage with a female and male end of a tubular handle, respectively;

FIG. 20 shows a tubular handle in accordance with an embodiment of the present invention, wherein the tubular handle has both a male and female end for connecting to a similar tubular handle and/or coupling device;

FIG. 21 shows a tubular handle attached to a tool in accordance with an embodiment of the present invention, wherein the handle is at least partially hollow, and a reinforcing device is inserted into the hollow portion of the handle to provide reinforcement for the handle

FIG. 22 is a profile view of a tubular handle having an elliptical profile and having inner/reinforcement walls, in accordance with an embodiment of the present invention;

FIGS. 23a and 23b show buoyancy plug means for maintaining a tube's buoyancy, in accordance with an embodiment of the present invention;

FIGS. 24a and 24b show plug means being adapted to also function as interior locking devices, in accordance with an embodiment of the present invention;

FIG. 24c shows a plug means similar to the one shown in FIGS. 24a and 24b, wherein the plug is operatively assembled within a telepole device according to an embodiment of the invention;

FIG. 25 shows a telepole end portion having additional holes to enable tools with various V-clip positions to be oriented on the telepole with respect to the position of the lever/button of the detent means.

DETAILED DESCRIPTION

Embodiments of the present invention will now be described with references to the accompanying figures, wherein like reference numerals refer to like elements throughout. The terminology used in the description presented herein is not intended to be interpreted in any limited or restrictive manner, simply because it is being utilized in conjunction with a detailed description of certain embodiments of the invention. Furthermore, various embodiments of the invention (whether or not specifically described herein) may include novel features, no single one of which is solely responsible for its desirable attributes or which is essential to practicing the invention herein described.

Although the examples of the many various methods of the invention are described herein with steps occurring in a certain order, the specific order of the steps, or any continuation or interruption between steps, is not necessarily intended to be required for any given method of practicing the invention.

Persons of ordinary skill in the art will understand that the apparatus of the invention and various of its many methods can be practiced using any of a wide variety of suitable processes and materials. By way of example and not by way of limitation, certain embodiments of the apparatus can be manufactured via processes using one or more steps of routing, drilling, turning, injection molding, extruding, thermo-forming, casting, and many other existing and new processes that may come into being. Materials are not limited in any way and could extend from metals to plastics, to resins of all types. A preferred material is lightweight, non-corrosive and will hold up to the exposure anticipated in its eventual usage (including by way of example, chlorine water, salt water, marine environments, UV exposure, etc.). A preferred method of manufacture is by injection molding and extruding various components of the embodiments, and by machining others and/or buying them from commercially-available sources.

Referring now to the drawings, and particularly to FIGS. 1, 2a, 2b, 3b, 5a, and 5b, a preferred embodiment of a telepole device 1 used for cleaning swimming pools is shown, including an outer/lower tube 2 having a collar element 3 with a detent locking device 4 mounted thereon, and an inner/upper tube 5 that slides through an opening in

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the collar element and within the outer tube. Preferably, the inner/upper tube has a profile with a smaller circumference than that of the opening of the collar element and the outer/lower tube so that it may readily slide within/through those elements in order to provide a telepole device having an adjustable length. Further, the inner/upper tube has a gripping portion 8 that may be attached with rivets, screws or other temporary or (semi-)permanent attachment devices. The gripping portion provides an area for a user to grip/grasp the telepole device and also prevents the inner tube from sliding entirely within the outer tube as the circumference of the gripping portion is larger than that of the collar element and/or outer/lower tube. Further, attachment devices (rivets, screws, or the like) can prevent the gripping portion from being "bumped" off the end of the tube when the inner tube slides into the outer tube, and they also make removing and/or replacing a worn handle possible.

Preferably, the outer/lower tube has a series of openings/holes 2a for receiving attachment means of cleaning tools, and has at least one drain hole 2b for allowing water trapped in the outer/lower tube to drain out. As will be further described herein, some of the many alternative embodiments of the invention can be practiced without all of these elements. Moreover, persons of ordinary skill in the art will understand that the elements described herein may even be provided in other embodiments in a wide variety of other forms depending on the desired use/application of the device.

As indicated, the present invention preferably includes means to adjust the length of the pole within the assembly. Persons of ordinary skill in the art will understand that this can be accomplished in a wide variety of ways, using various apparatus and methods. In a preferred embodiment of the present invention, the inner/upper tube has a series of openings/holes 6 along its length that are configured to receive a detent pin element 7 located in a housing 10 of the collar element in order to "lock"/temporarily secure the inner/upper tube in a desired position within the outer/lower tube. The detent pin element is affixed to a spring element 9 that, when in its normal "relaxed" position, allows the pin element to sit/rest simultaneously in a hole 10a through the housing of the collar element and one of the holes of the series 6 in the inner tube, thus locking the inner/upper tube into a desired position within the outer/lower tube. In addition, a button element 11 is mounted within the housing above the detent pin and is held in place by tab elements 12. When the button element is depressed by a user, the spring is pressed against an uneven surface 13 in the housing and forced into an "unrelaxed" position which in turn causes the pin element to be lifted out of the inner tube's hole 6, thus releasing the inner tube so that it can be moved into a new position within the outer tube. Releasing the button allows the spring to revert to its normal, relaxed position and enables the detent pin to reenter a hole 6 in the inner tube so that the inner tube may be secured in another desired position within the outer tube.

Further in a preferred embodiment, a saddle bushing 5a is provided between the outer wall 15 of the of the inner tube and the inner wall 16 of the outer tube. The saddle bushing element has a post element 14 that fits into a designated hole 6a for receiving the post element in the inner tube in order to guide the inner tube into proper alignment with the outer tube (i.e., so that the detent pins may be readily aligned with the detent holes) and to prevent the inner tube from sliding past the housing and separating from the outer tube. Further, a plug 21 at the end of the inner tube opposite the end with

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the gripping element 8 preferably prevents water from entering through the inner tube's end.

Telepoles which are used in swimming pool (or similar) cleaning applications are repeatedly submerged in water of varying depths. Accordingly, a telepole capable of reaching below the water's surface (at times a significant amount below) is desirable, especially when cleaning deep areas of a pool, during long reaches, or both. It is a well known issue that water may easily enter the outer tubes of prior art extendible poles, through an attachment hole or other opening, and it may likewise enter the inner tube of the pole assembly. It is very undesirable, however, for water to enter the inner tube because, for example, it adds a significant amount of weight to the telepole device making it more difficult to maneuver the pole/assembly and taking longer to drain the device.

Accordingly, in a preferred embodiment of the present invention, the inner tube is configured such that water is prevented/stopped from entering some (and preferably most or even all) of the hollow portion of the inner tube. Persons of ordinary skill in the art will appreciate that there are numerous potential inner tube configurations which may provide a water tight seal to the telepole device, and that depending on the intended use of the device, any of these potential configurations (or combinations of them) may be desirable for use with the present invention. Moreover, any existing non-water tight inner tube of an existing device may be retrofitted with an inner tube that is configured to prevent water from leaking in.

FIG. 3a shows an example of a preferred inner tube which is configured to provide a watertight seal. The inner tube has a barrier 17 which prevents water from entering the inner tube through the series of detent holes 6 along the length of the inner tube. Preferably, the barrier runs the length 17a of the inner tube, and is configured to allow the detent pin 7 enough space to sit within the hole 10a of the housing 10 and a detent hole 6 in the inner tube when the spring 9 is in its normal, relaxed position. In such embodiments, almost the entire interior volume of the inner tube is watertight; the only portion "open" to water is the small sliver of space between the tube outer wall and the barrier 17, into which the pin protrudes when engaged. Although a watertight telepole device is desirable for many reasons in pool/water cleaning applications, persons of ordinary skill in the art will appreciate that the numerous benefits provided by this invention may still be realized even in non-watertight embodiments.

Further in a preferred embodiment, the inner tube has a distinct profile/shape that corresponds or is keyed to the profile/shape of the opening 10b of the collar element through which it extends. Among other things, this keyed relationship can prevent the undesirable rotation of the inner/upper tube within the collar element and outer/lower tube, and thereby allow the user to have more certain control over the assembly during its use in cleaning or other activity. In this preferred embodiment, the collar's opening and the profile of the inner tube are similarly out-of-round having one or more corresponding "sides" 18a that prevent the inner tube from rotating within the collar. This ensures that the pin 7 will always be aligned with the series of detent holes 6 along the length of the inner tube, and it enables a user to maneuver attached tools more effectively during cleaning.

In a preferred embodiment of the present invention, an inner/upper tube with a profile that includes one or more additional inner walls across its diameter is provided in order to give the inner/upper tube added strength along its

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length. This improved inner/upper tube with additional inner strengthening walls may be used with existing telepoles (for swimming pools or other uses) in a retrofit embodiment. In this embodiment, the existing inner/upper tube may be replaced/retrofitted with an improved inner/upper tube with additional inner strengthening walls or means. In this embodiment, the existing and improved inner/upper tubes have the same outer profiles along their lengths such that they both readily slide through the collar and outer/lower tube, and can easily be replaced with one another.

More broadly, persons of ordinary skill in the art will understand that the various components of certain embodiments of the invention can be provided in a modular and interchangeable form, facilitating economic manufacture/assembly/distribution of the devices, easy replacement of worn or damaged parts, exchange of longer pole/tube elements for shorter ones (and vice versa), and other benefits.

Persons of ordinary skill in the art will appreciate that a variety of inner tube profiles/shapes may be provided in accordance with the present invention. For example, among the many benefits provided by varying profiles/shapes/configurations, the inner tube(s) of the present invention may be configured to reduce bending of the inner tube, prevent water from entering the inner tube through the detent holes, keep the inner tube from rotating within the outer tube, and/or facilitate a plug with a locking device having a shape that corresponds to a tube's profile.

In a preferred embodiment of the present invention, additional wall(s) 17b may be provided along the length 17c of the inner tube to increase its strength/resistance to bending, denting, etc. Persons of ordinary skill in the art will appreciate that those additional wall(s) may be configured in many possible ways while still providing additional strength along the length of the tube. For example, FIGS. 15a and 15b show two possible configurations of inner/reinforcement walls provided within a tubular handle. In FIG. 15a, a single reinforcement wall extends along a hollow portion of the inner tube from one side of the tube to another. In FIG. 15b, additional walls are provided which cross at least a portion of the tube's inner profile and intersect with each other at approximately the center of the inner portion of the tube. Persons of ordinary skill will understand that these are just examples of some of the possible configurations of reinforcement wall(s) within an inner tube, and that other possible configurations and numbers of walls which may be provided are virtually unlimited. As an example, FIG. 22 shows inner/reinforcement walls provided within a telepole having an elliptical profile. In such an embodiment, both the outer/lower tube and inner/upper tube of the telepole/tube have elliptical profiles, and inner/reinforcement walls are provided along the length of the inner tube.

In addition to or within another embodiment, a thickened wall portion 19 along the length of an inner tube may be provided with detent holes 6 drilled partially into that thickened portion to accommodate detent pins, and the remaining portion 20 providing a barrier that prevents water from entering the inner tube.

In embodiments having thickened wall portions and/or reinforcement walls, buoyancy plug(s) may be provided within an inner/upper tube to maintain and/or increase the buoyancy of the tube. FIGS. 23a and 23b show possible buoyancy plug embodiments, wherein the plugs are configured to accommodate reinforcement wall(s) and/or thickened wall portion(s) within an inner/upper tube. In addition and as shown in FIGS. 24a-c, such plugs can be further adapted to function as interior locking devices having spreaders or an eccentric cam. In such embodiments, a cam

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assembly on the plug is configured as a "stop" to keep the inner/upper tube assembled within the outer/lower tube. As shown in the figures, a portion of the plug and/or cam assembly is wider than the opening on the compression nut to prevent the inner/upper tube from sliding out of the outer/lower tube when the telepole is fully extended. In a telepole device that does not have a compression locking device, a ridge on the collar of the device (similar to the compression nut shown in the drawings) may function to prevent the inner and outer tubes from separating.

In another alternative embodiment of the present invention, the inner tube may be provided with notches 22 about its circumference or other/similar sides that correspond to protrusions/tabs in the collar element in order to prevent the inner tube from excessively or undesirably rotating within the outer tube during use. Alternatively or concurrently, further barriers/parts such as a sleeve element 23 or cup element 24 may be permanently or temporarily provided in key areas to provide a water tight seal to the inner tube.

Furthermore in an alternative embodiment of the present invention, an outer tube having a profile that is not perfectly round may be provided along with an inner tube having a locking device mounted thereon or integral therewith. In this embodiment, the locking device is activated when a user twists the inner tube and causes the locking device to wedge itself against the uneven inner walls of the outer tube. The locking device is deactivated by a twist in the reverse direction.

Persons of ordinary skill in the art will appreciate that the detent mechanism of the present invention has many potential embodiments, all of which provide the benefits realized by the present invention. Referring now to FIGS. 7, 8, 9, 10, 11, and 11a, in one potential embodiment, the inner tube 5a may have a row of teeth 25a or other detent components along some or all of its length, a collar with a housing 10 formed into it, and a detent mechanism 4 including a device such as a rocking lever 26 with corresponding teeth 25b or some other element corresponding to the inner tube's detent component. Yet another preferred way of practicing the detent mechanism of the present invention is a spring-loaded lever detent means. As shown in FIG. 2c, unlike the rocking lever detent means of FIG. 8, the spring-loaded lever mechanism has a detent pin that fits into holes along the inner tube.

Persons of ordinary skill in the art will also appreciate that the detent components of the inner tube may be configured, formed and/or attached to the inner tube in many ways. For example, a detent component 25a may be provided on an external portion of an inner tube 5a having a round profile. The external component may be integrally formed with the inner tube or permanently or temporarily attached to the inner tube during assembly. This external component may provide "sides" on the inner tube that correspond to indentations/protrusions/tabs on the collar in order to prevent unwanted/excessive rotation of the inner tube within the outer tube.

With the addition of a lever/button detent means, a "face" is created on the outside of the telepole (rather than the telepole simply being round with no identifiable sides/front/back). Therefore, additional attachment holes are needed to accommodate tools such as brushes having V-Clips which are mounted to the telepole in a horizontal position (with respect to the direction the tool moves when it is used to clean a pool, for example). Other tools such as leaf nets have V-Clips mounted in a vertical position in relation to the way the net moves through the water. As shown in FIG. 25, adding a second set of attachment holes (90 degrees away from the first set), the lever or button of the detent means can

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be oriented to the tool according to the preference of the user. The addition of such holes may also reduce wear and tear on the end of a telepole. Since cleaning tools are almost constantly exposed to pressure during use, a plurality of attachment holes may distribute that pressure to more than one area around the telepole's end. Thus, a second set of such attachment holes may be added to telepoles that have no lever/button detent means or "face" and are round with no identifiable sides/front/back.

In an alternative embodiment, the inner tube may be formed with inclusions 5*b*, ribs or other detent components which correspond to complementary detent elements provided in a detent mechanism located adjacent to or within the outer pole's collar element, such as a rocking lever 26 or an end-hinged lever 27. In addition, a compression device such as the end-hinged lever shown in FIG. 11*a* or threaded compression ring 29 shown in FIG. 12 may further be used with a collar element 3 or some other compression device element. For example, a compression gasket 30 having an opening that corresponds to the profile of an inner tube 5*c* may be provided. In this embodiment, the gasket opening and corresponding profile of the inner tube are configured with one or more corresponding "sides" 18*a* that prevent the inner tube from rotating within the collar.

Additionally, FIGS. 12*b*, 12*c*, and 12*d* show a telepole device in accordance with the present invention having an outer tube including a collar element 3 comprised of a threaded portion 36 and a portion for receiving a compression gasket 34. Teeth, ridges, or other similar detent means 35 are formed into the compression gasket which matingly engage with inclusions, ribs or other similar detent elements 5*b* along the outer walls of the inner tube. Tightening the compression ring causes the teeth of the compression gasket to engage with the inner tube's detent elements and in turn prevents the inner tube from sliding within the outer tube. Conversely, loosening the compression ring disengages the teeth and detent elements, and permits a user to adjust the telepole's length by sliding the inner tube within the outer tube. In another embodiment, the compression gasket may be provided with ribs or similar detent means which correspond to detent features along the outer walls of the inner tube, and which hold the inner tube in place along the length of the outer tube but allow the inner tube to rotate within the outer tube. In yet another embodiment, the inner/upper tube and the compression gasket and/or collar's opening may each have one or more corresponding sides that prevent rotation of the inner tube within the outer tube.

Further, a plug or internal locking device 37 may be fitted into the end of the inner tube to further prevent the inner tube from slipping or rotating within the outer tube, and may even keep water from entering the inner tube. In certain embodiments, the internal locking device may include an off-center cam 38 or other spreading device 31 having moving parts 32 that can be wedged against the inner walls of the outer tube in order to lock the inner tube in a desired position along the length of the outer tube. Even further, the inner tube may have one or more sides that are keyed to correspond with one or more sides of the compression device and/or its components to facilitate "locking" the inner tube in place with respect to the outer tube and preventing any undesired or excessive rotation of the inner tube within the outer tube.

Moreover, a telepole with any suitable compression device for "locking" the inner tube in a given position within the outer tube may further include an outer tube which is configured to prevent the inner tube from rotating within the outer tube. In one potential embodiment, as shown in FIG. 14, an outer tube may be provided with an inward/interior-

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facing protrusion 34 within its profile, and an inner tube may correspondingly have an indentation 35 within its profile. The indentation in the inner tube may be capable of receiving the outer tube's protrusion for the purpose of preventing the inner tube from rotating within the outer tube. Since such a configuration may make it difficult or impossible for the outer tube to receive standard cleaning tool attachment means, an adapter may be mounted on the outer tube's end to enable standard tools with V-clips to be attached to the present telepole device.

In some of the many alternative embodiments of the present invention, any levers and/or buttons, etc. may be partially or entirely recessed into a housing 10 that has sides 28 to protect the levers and/or buttons from being bumped by a user's hands or any other object or surface that may cause damage to or accidental release of the lever or detent mechanism.

In further alternative embodiments, a telepole for cleaning swimming pools in accordance with the present invention may include an outer tube whose profile is not uniformly round/circular along its length, and an inner tube having a cam or other similar spreading device 31. This configuration increases the ability of the inner tube to be "locked" in place within the outer tube. By twisting and rotating the inner tube within the outer tube, a user can misalign the cam or activate the spreading device so that the sides of its moving parts 32 engage themselves with the out-of-round inner walls 33 of the outer tube and lock the inner tube in a desired position. A reverse action disengages the cam or spreading device and unlocks the inner tube and permits readjustment of the telepole's length.

Persons of ordinary skill in the art will appreciate that the "locking" mechanisms described herein may be combined with other locking mechanisms described herein or others which are known in the art in order to provide a device that achieves the objects presented herein. On the other hand, any locking mechanism may stand alone to effectively achieve those objectives.

The present invention further provides means for attaching, detaching and re-attaching a variety of tools to the tubular handle of the present invention. As shown in FIGS. 16*a/b* and 17, a tubular handle of the type described herein having inner/reinforcement walls along its length may be attached to any type of tool, depending on the need of the user. If/when it is desired to remove/detach that tool from the tubular handle, the tool may be detached from the handle, as shown in FIG. 17.

In an embodiment of the present invention, that attachment means may be provided as a "quick-release" device for easy attachment and detachment of the tool and the tubular handle. As shown in FIGS. 18*a-c*, a quick-release device may be provided on the tool, handle, or both to enable ready attachment and detachment of the parts from each other. As shown in the drawings, a preferred quick-release device for use with the present invention is a spring-loaded button mechanism, however, persons of ordinary skill will appreciate that this is only an example of the many possible devices which may be used. For example, a quick-release device in accordance with the present invention may include a threaded end that can be twisted to either tighten or loosen the (tool) attachment, may be an interlocking device, and/or utilize V-clips, etc. The convenience provided by quick-releasing tools/handles is especially beneficial in applications of working with and finishing concrete wherein tools such as a bull float, trowel, rolling tamper, seamer, and various other tools or adapters are commonly used in conjunction with an extendable handle.

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Further, the benefits provided by a quick-release mechanism can be realized in attaching one or more tubular sections together for increasing the overall length of the handle. As shown in FIGS. 18*c-e*, a quick-releasing device/mechanism may be used to join one or more similar sections of tubular handle together. Persons of ordinary skill will appreciate that the quick-release mechanism may be provided on the tubular section(s) itself (FIG. 18*c*), on a coupling device (FIGS. 19*a-c*) for joining tubular sections, or both. Further, male and female mating ends may be provided in any configuration on the tubular sections and/or coupling devices in order to join similar sections of tubular handles together. Some examples include: a tubular handle in which one side is a male end configured to fit into the female end of another tubular handle; a tubular handle length that has only female ends; a tubular handle length that has only male ends; a tubular handle with at least one male end formed by 'necking down' the handle's male end or ends; and a tubular handle with at least one female end formed by 'expanding' the handle's female end or ends.

The apparatus and methods of my invention have been described with some particularity, but the specific designs, configurations, and steps disclosed are not to be taken as delimiting of the invention in that various modifications will at once make themselves apparent to those of ordinary skill in the art, all of which will not depart from the essence of the invention, and all such changes and modifications are intended to be encompassed within the appended claims.

The invention claimed is:

1. An elongated telescoping pole apparatus, including:
 - an elongated outer tube;
 - an elongated inner tube configured and sized to be slidably within said outer tube;
 - said inner and outer tubes keyed to prevent relative rotation of the tubes with respect to each other around a central longitudinal axis through the tubes;
 - said outer tube having first and second ends, said first end of said outer tube having a selectively actuatable detent configured to engage said inner tube at a selected position along the length of said inner tube, said second end of said outer tube having structure for removably attaching a tool;
 - said inner tube having first and second ends, said first end being received in said slidable relationship within said outer tube, said second end having a grip attached thereto, said selective sliding action of the tubes causing the respective distance between said grip on said inner tube and said actuatable detent on said first end of said outer tube to change;
 - the lengths of said outer and inner tubes when engaged with each other being sufficient to permit a user gripping said first end of said inner tube to manipulate the swimming pool cleaning tool at the second end of said outer tube against the bottom of a swimming pool while the user is standing on the side of the pool.
2. A telescoping pole apparatus, including:
 - an outer tube having first and second ends, said first end of the outer tube having a collar associated therewith, said collar containing a selectively actuatable detent, said second end of said outer tube having structure for removably attaching a tool;
 - an inner tube having first and second ends, said first end of said inner tube including a grip attached to the inner tube for a user to grasp and manipulate the apparatus, said second end of said inner tube being slidably received in the first end of the outer tube through an opening in said collar, said inner tube having a plurality

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of detent holes positioned to be engaged with said actuatable detent, said inner tube being a single wall tube that is hollow along at least substantially its length between said first and second ends of said inner tube; and

said inner tube configured to slide within said outer tube to a selectable position relative to the outer tube, at which position said detent is configured to temporarily engage and hold said inner tube.

3. The apparatus of claim 2, further including a swimming pool cleaning tool attached to said second end of said outer tube using at least one V-clip that can be inserted into two holes positioned opposite each other near the end of said outside tube.

4. The apparatus of claim 2 or claim 3, wherein said structure for removably attaching a tool includes at least two pairs of holes, the holes in a given pair being positioned on opposite sides of said second end of said outer tube at the same position along a lengthwise axis of said outer tube.

5. The apparatus of claim 4, wherein at least one of said pairs of holes is at a different position along a lengthwise axis of said outer tube from another of said pairs.

6. The apparatus of claim 2, in which said outer and inner tubes are keyed to limit their rotation relative to each other around a central longitudinal axis running through the center of said tubes, said keyed relationship existing at all or substantially all of the positions in which said inner tube can be selectively positioned within said outer tube.

7. The apparatus of claim 2, in which said outer and inner tubes are keyed to limit their rotation relative to each other around a central longitudinal axis running through the center of said tubes, said keyed relationship existing between said collar and said inner tube.

8. The apparatus of claim 7, in which said inner tube has a cross-section that at least is keyed to an opening in said collar element through which said inner tube is slidably positioned, and the keyed relationship helps prevent or limit said inner tube from rotating within said collar around said longitudinal axis.

9. The apparatus of claim 7, in which said inner tube has a cross-section that at least is keyed to a compression gasket associated with said outer tube and through which said inner tube is slidably positioned, and the keyed relationship helps prevent or limit said inner tube from rotating within said gasket around said longitudinal axis.

10. The apparatus of claim 2, further including at least one more tube slidably engaged with at least one of said inner tube and/or said outer tube.

11. The apparatus of claim 2, wherein said grip has a larger diameter than the diameter of the inner tube.

12. The apparatus of claim 2, further including an adapter attached to said second end of said outer tube, said adapter having structure for using at least one V-clip to selectively connect pool cleaning tools to said adapter.

13. The apparatus of claim 2, said second end of said outer tube having a sidewall including:

at least two pairs of enclosed perforations through said sidewall and spaced radially from a longitudinal axis of said outer tube, a first perforation of a given pair being spaced radially on one side of the longitudinal axis and the other perforation of the pair being radially spaced on the other side of the longitudinal axis.

14. The apparatus of claim 13, in which the at least two pairs of perforations are spaced radially from the longitudinal axis at the same lengthwise location along a lengthwise axis of said outer tube.

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15. The apparatus of claim 13 or claim 14, in which the at least two pairs are positioned rotationally at 90 degrees from each other when measured rotationally around a lengthwise axis of said outer tube.

16. The apparatus of claim 2, wherein said detent holes provide a plurality of selected lengthwise positions for said actuatable detent.

17. The apparatus of claim 2, said inner tube having a thickened wall portion around at least a portion of said inner tube and extending along at least a portion of the length of said inner tube, said detent holes formed at least partially in said thickened portion.

18. The apparatus of claim 2, said detent including a spring-actuated lever lock.

19. The apparatus of claim 2, said inner and outer tubes formed from a relatively lightweight material such as aluminum.

20. A telescoping pole apparatus, including:
 an outer tube having first and second ends, said first end of said outer tube having a collar associated therewith, said collar containing a selectively actuatable detent, said second end of said outer tube having structure for removably attaching a tool;
 an inner tube having first and second ends, said first end of said inner tube including a grip attached to the inner tube for a user to grasp and manipulate the apparatus;
 an intermediate tube slidably interposed between said inner and outer tubes, said intermediate tube having first and second ends, said first end of said intermediate tube slidably received in the first end of said outer tube through an opening in said collar, said intermediate tube having a plurality of detent holes positioned to be engaged with said actuatable detent of said outer tube's collar, said second end of said intermediate tube having a selectively actuatable detent;
 said second end of said inner tube being slidably received in the second end of said intermediate tube through an opening in said intermediate tube's collar, said inner

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tube having a plurality of detent holes positioned to be engaged with said actuatable detent of said intermediate tube's collar;

said intermediate tube configured to slide within said outer tube to a selectable position relative to said outer tube, at which position said detent of said outer tube is configured to temporarily engage and hold said intermediate tube; and

said inner tube configured to slide within said intermediate tube to a selectable position relative to said intermediate tube, at which position said detent of said intermediate tube is configured to temporarily engage and hold said inner tube.

21. An improved telepole device, comprising:
 an outer tube element having first and second ends, said first end of the outer tube element having a collar element associated therewith, said collar element containing a detent means, said second end of the outer tube having attachment means for removably attaching a tool;

an inner tube element having first and second ends; said second end of said inner tube element being received in the first end of the outer tube through an opening in said collar element;

wherein said inner tube element is configured to readily slide within said outer tube element to a selected position along the length of the outer tube, and wherein said detent means is configured to temporarily lock the inner tube in that selected position within the outer tube.

22. The telepole of claim 21, wherein the tool is a swimming pool cleaning tool.

23. The telepole of claim 21, wherein the tool is a concrete finishing tool.

24. The telepole of claim 21, wherein said inner tube element has a cross-section that is generally round with at least one flat side, and said collar is keyed to engage said at least one flat side and thereby prevent rotation of said inner and outer tubes relative to each other.

* * * * *

EXHIBIT B

**Defendant James Conrad Gasped When he First Saw Plaintiff's '852 Patent
Inventions**

Below is a true and correct Copy/Excerpt from U.S. Patent Office Records,
Appl. Ser. No. 15/708,038 (from which the '852 Patent issued); Third
Supplemental Amendment and Response filed November 14, 2019, at pages 1 and
124-129:

File No. RESH-P3841.4

PATENT

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of: Eric Resh

Serial No.: 15/708,038

Art Unit: 3723

Filed: September 18, 2017

Examiner: Scruggs, Robert

For: TELEPOLE APPARATUS AND RELATED METHODS

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

THIRD SUPPLEMENTAL AMENDMENT AND RESPONSE

Sir:

Even before the current filings, Applicant has presented an overwhelming amount of strong evidence that Applicant's claimed inventions are not obvious (and therefore are patentable, as discussed here and in Applicant's previous filings). Applicant acknowledges that this document and the other materials that Applicant has filed are lengthy (although a substantial portion of them are graphics such as photos and screenshots, which should make them quicker and easier to review and consider).

Certificate of Electronic Filing

I hereby certify that this correspondence is being filed electronically via EFS with the U.S. Patent and Trademark Office, on the date below.

/J. Mark Holland/

November 14, 2019

J. Mark Holland, Reg. No. 32,416

DATE

File No. RESH-P3841.4

Serial No. 15/708,038

...[W]e think that **the district court's finding that the developments embodied in the Conibear patent would have been obvious to one with ordinary skill in the pertinent art must be rejected. Although through the use of hindsight the Conibear patent may have appeared obvious,** we think the defendants failed to produce sufficient evidence to establish that Conibear's patent was an obvious development based upon the prior art. To invalidate a patent, the court, in evaluating the evidence, must be able to say that the differences between the prior art and the patented subject matter as a whole would have been obvious at the time of the invention to a person ordinarily skilled in the art. *Graham, supra*, 383 U.S. at 15, 86 S.Ct. 684. The heart of the defendants' case consisted of the testimony of one witness, admittedly completely unskilled in the trapping art, who concluded that the Conibear patent was obvious in the light of the prior art. This testimony, standing by itself, will not suffice to overcome the presumptive validity of the United States patent. This testimony stands in sharp contrast to other **evidence tending to show nonobviousness of the Conibear discovery, such as inventor Lehn's expression of surprise and excitement upon learning of this new trap...**

Thus, the *Woodstream* expert in the field testified that, upon seeing a picture of the relevant invention, he **"couldn't take [his] eyes off of that picture,** and felt that the picture of the invention **"almost knocked [him] off [his] feet."**

As described below, that "expression of surprise" is very similar to the reaction that arguable "expert in the field"²³ Jim Conrad had to Applicant's

²³ Applicant does not concede that Jim Conrad is an "expert" for all purposes. As presently advised, however, Applicant understands that Mr. Conrad has worked at swimming pool pole company Skimlite since 1959, the year that Skimlite purportedly introduced the first telescoping swimming pool pole. Assuming those credentials accurate, it appears that his reactions to Applicant's inventions may have the same relevance to show nonobviousness, as did the "expert" in the *Woodstream* case. To be even more direct, Applicant is not waiving the right to challenge Mr. Conrad's "expert" qualifications in any future proceeding or filing.

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inventions. One difference that may explain Mr. Conrad's even more physical reaction (as compared to the *Woodstream* expert) is that he was not just looking at a "picture" – he was holding Applicant's pole inventions in his hands.

1. Upon Seeing Applicant's DETENT-LOCKING Poles for the First Time, Competitor Skimlite/Jim Conrad GASPED and was SPEECHLESS!

In his current patent application, Applicant has presented evidence from a person who, like *Woodstream's* 75-year-old person, had spent his entire life in the relevant field. Specifically, Applicant has presented the reactions of Jim Conrad, who has spent his entire adult life manufacturing telescoping swimming pool poles with copier/competitor Skimlite. Mr. Conrad has worked with Skimlite since 1959, which would be 53 years of WORK there, at the time that Mr. Conrad saw Applicant's invention in 2012.

Applicant's evidence of Mr. Conrad's 2012 immediate reactions to Applicant's pole inventions, when Mr. Conrad first saw those inventions, shows that they were at least arguably similar to (and possibly even stronger than) the *Woodstream's* witness's "expression of surprise and excitement upon learning of this new [invention]." In some ways, Mr. Conrad's may have been even stronger and more telling than that of the *Woodstream* expert's reaction, because Mr. Conrad owned and/or was president of competing swimming pool pole-manufacturer Skimlite at the time he first saw Applicant's pole inventions.

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Mr. Conrad's very immediate and direct and observable physical reactions to seeing for the first time (while holding in his own hands) Applicant's pole inventions are as follows:

9. The first time that Jim Conrad apparently saw our new telescoping poles was about six years ago, at the Western Pool & Spa trade show in Long Beach, CA, March 15-17, 2012. I was working in our booth at that trade show when Jim walked by our booth, said "Hi," and then saw our [sample] pole lying on the table (button/detent side down). Jim asked something like, "Oh, what do you have here...?" Jim actually gasped when he saw our detent-locking device on our pole.

Eric Resh 2018 declaration, par. 9 (emphasis added).

In the Resh Second Declaration, Applicant has provided further details regarding Mr. Conrad's first sight of Applicant's detent-locking pole, to make even more clear that Mr. Conrad's extreme reactions were not caused by Applicant's new "pole" itself. Instead, Mr. Conrad, who had spent his life making and designing swimming pool poles, was shocked by seeing that Applicant had made a "detent-locking" pole:

When [Mr. Conrad] saw that it had a detent-locking system (instead of a twist-lock), he immediately gasped. ... After seeing that lock, Jim Conrad was nearly speechless.

Eric Resh Second declaration, pars. 10-14 (emphasis added).

If Applicant's pole inventions were "obvious," why would a person like Mr. Conrad (who spent his life making swimming pool poles) react as he did? Why would they gasp and be left speechless?

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Applicant respectfully submits that, independently of anything else Applicant has presented, Mr. Conrad's reactions are strong and important evidence of an "AFTER" circumstance (for purposes of Judge Learned Hand's test) showing that Applicant's inventions are not obvious.

2. Mr. Conrad's Reactions are "PARTICULARLY TRUSTWORTHY" Evidence that Applicant's Inventions are Not Obvious

Again, Applicant respectfully submits that this extreme and immediate physical reaction by a competitor is especially trustworthy evidence about Applicant's pole invention NOT being obvious. In that regard, although this patent prosecution is not a lawsuit, Rule 803 of the Federal Rules of Evidence seems potentially very relevant to the weight that should be given to this particular "objective indicia evidence." That Rule indicates that the Examiner should give great weight to Mr. Conrad's foregoing reactions.

Rule 803 defines certain evidence as being so trustworthy that it is admissible even if it would otherwise be excluded as "hearsay." As discussed below, Mr. Conrad's reactions appear to qualify as this "especially trustworthy" evidence. Specifically, Rule 803 defines certain exceptional evidence that, although hearsay, is still admissible in Federal Court. Among those exceptions are two that seem to apply to Mr. Conrad's reactions: an "excited utterance" and/or "present sense impression." Those portions of Rule 803 read as follows:

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"The following are not excluded by the rule against hearsay, regardless of whether the declarant is available as a witness:

(1) *Present Sense Impression*. A statement describing or explaining an event or condition, made while or immediately after the declarant perceived it.

(2) *Excited Utterance*. A statement relating to a startling event or condition, made while the declarant was under the stress of excitement that it caused."

Mr. Conrad's immediate reaction to seeing Applicant's pole seems to be a prime example of such especially strong evidence of the nonobviousness of Applicant's pole inventions. One commentator²⁴ discussed the rationale for finding statements like Mr. Conrad's to be so trustworthy:

The excited utterance exception [such as in Rule 803] provides that statements made under the influence of an exciting event while the speaker is still in a state of nervous excitement may be admitted for the truth of the matters they assert ... According to Wigmore, **a hearsay statement must meet the following criteria to qualify under this exception:** (1) there must be a "startling occasion," (2) the out-of-court statement must be made before the declarant has had time to "fabricate." and (3) the declarant's out-of-court statement must relate to the circumstances of the startling event.

Wigmore explained **the policy of the exception** as follows:

This general principle is based on the experience that, **under certain external circumstances of physical shock, a stress of nervous excitement may be produced which stills the reflective faculties and removes their control, so that the utterance which then occurs is a spontaneous and sincere response to the actual sensations and perceptions already produced by the external shock.**

²⁴ Aviva Orenstein, "MY GOD!": A Feminist Critique of the Excited Utterance Exception to the Hearsay Rule, 85 Cal. L. Rev. 159, 169-170 (1997).

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The witness' state of nervous tension was of utmost importance in Wigmore's analysis. According to Wigmore, this "immediate and uncontrolled domination of the senses" lasts for a "brief period." During this short time, neither thoughts of "self-interest" nor other "reasoned reflection" arise. Therefore, the utterance is "particularly trustworthy" and may be admitted despite its hearsay character. Wigmore even hinted that such evidence is superior to in-court testimony because of its spontaneity and closeness to the event.

(footnotes omitted; emphasis added).

Based on all of the foregoing principles, Mr. Conrad's reaction should be considered by the Examiner to be yet another objective indicium of nonobviousness, and in fact a very strong indicium. Mr. Conrad experienced a "startling occasion" – he saw Applicant's detent-locking pole for the first time. His gasp and his speechlessness were immediate – before he had any opportunity to "fabricate" or fake some other reaction or comment. Finally, Mr. Conrad's reactions (gasping and speechlessness) were directly related to him turning over Applicant's pole in Mr. Conrad's hands, and seeing for the first time a detent-locking swimming pool pole.

Thus, Mr. Conrad's reactions were made before he could "fabricate." According to Professor Wigmore, his reactions are even "superior to in-court testimony" that Mr. Conrad might eventually provide on the issue.

EXHIBIT C

Preliminary/Exemplary Claim Charts Showing Defendants' Infringement


223. In the table below, Plaintiff's '852 Patent Claims 1, 2, 20, and 21 (the independent claims) from are shown in the left-hand column, and screenshots and other graphics and text relating to Defendants' corresponding infringing products are shown in the right-hand column. The table includes highlighting and text and other mark-up to show some of the correspondence between the claim elements on the left and the relevant parts of Defendants' infringing products on the right. As discussed above, Claims 1 and 21 are among those for which Defendants are liable for pre-issuance damages, and Claim 21 is the claim that Defendants have already admitted that they infringe.

224. The screenshots in the right-hand column are taken from videos and photographs posted on the Internet by Defendants and by third parties, including at the following locations:

- a. one of Defendants' own YouTube videos (at https://www.youtube.com/watch?v=5ELd_3PpDI) entitled "How to Use a Snaplite Pole." The relevant YouTube display indicates that Defendants posted the video on May 15, 2020. Defendants' video, and the excerpted screenshots below, show Defendant Barrett Conrad using one of Defendants' infringing poles (Defendants' model Snaplite 6016) [NOTE: Around the 0:39 time-stamp of Defendants' above video, Defendant Barrett Conrad admits that Defendants' Snaplite 6016 pole is "quickly becoming many people's favorite [pole]."];
- b. another of Defendants' own YouTube videos (at <https://www.youtube.com/watch?v=ldpzcFZJsW4>) entitled "Replace a Snaplite Button." The relevant YouTube display indicates that Defendants also posted this video on May 15, 2020. Defendants' video, and the excerpted screenshots below, show Defendant Barrett Conrad replacing the "button or lever" on one of Defendants' infringing poles.

- c. a third party's YouTube video (at <https://www.youtube.com/watch?v=0oRmQATec5E>) entitled "The BRUTE Pole- Strongest Professional Grade Pool Pole! Plus the SKIMLITE 6000 SnapLite Series Poles", with a posting date indicated as June 24, 2019; and
- d. another YouTube video posted by that same third party (at <https://www.youtube.com/watch?v=u5hTKelagiE>), in which the third party narrator says (beginning at the 3:10 mark) that he "find[s] the [infringing Snaplite] buttons easier to use ... versus twisting and unlocking the [prior art Skimlite Dually model pole] sections."

225. Below is the preliminary/exemplary table comparing certain of Plaintiff's '852 Patent claims to examples of Defendants' infringing products:

INDEPENDENT Claims of Plaintiff's '852 Patent	Examples of Defendants' Infringing Products (Model 6016 – 2 tubes; Model 6317 – 3 tubes)
1. An elongated telescoping pole apparatus, including:	 <p>[Two of Defendants' poles are shown above, one each of Model 6016 and Model 6317. Defendants' poles "telescope" within a range of lengths as shown below, and are elongated - the remaining parts of the pole extend out of the photograph to the right]. More complete photographic examples of Defendants' full poles are shown below.</p>


INDEPENDENT Claims of Plaintiff's '852 Patent	Examples of Defendants' Infringing Products (Model 6016 – 2 tubes; Model 6317 – 3 tubes)
<p>an elongated outer tube;</p> <p>an elongated inner tube configured and sized to be slidable within said outer tube;</p>	<div data-bbox="812 275 1372 913"> </div> <p>[Defendants' Model 6016 pole is shown above, in an extended (not collapsed) condition. The pole has an elongated outer tube (shown from the black housing in approximately the middle of the pole and extending into the water), and an elongated inner tube (shown as being gripped by the user, and extending generally from approximately the middle of the pole upwards to the red handle/grip). The inner tube is shown in the online videos as sliding within the outer tube (and therefore is configured and sized to be slidable)].</p>

INDEPENDENT Claims of Plaintiff's '852 Patent

said inner and outer tubes keyed to prevent relative rotation of the tubes with respect to each other around a central longitudinal axis through the tubes;

Examples of Defendants' Infringing Products (Model 6016 – 2 tubes; Model 6317 – 3 tubes)

[The keyed relationship between the tubes of Defendants' poles (to prevent relative rotation around the pole's longitudinal central axis) is illustrated in the photos above. The top photo shows Defendants' Model 6016 in a collapsed position (with the red grip close to the lever/button actuator). The middle photo shows the user pushing the lever/button with the user's right thumb, and the inner tube (with the red grip) telescoped outwardly (away from the lever/button). The lower photo shows the upper end of the pole in an extended position. Collectively, the photos illustrate the keyed relationship that keeps the row of holes (on the inner tube) aligned with the lever/button (on the outer tube). In other words, the keyed relationship prevents the user from inadvertently twisting the tubes out of alignment, and consequently keeps the holes and the lever/button aligned]

INDEPENDENT Claims of Plaintiff's '852 Patent	Examples of Defendants' Infringing Products (Model 6016 – 2 tubes; Model 6317 – 3 tubes)
said outer tube having first and second ends,	 <p data-bbox="711 716 1489 926">[The screenshot above is the lower right section of the screenshot at the beginning of this table, with a red arrow pointing to first end of the outer tube, and the black arrow pointing to the second end of the outer tube]</p>

INDEPENDENT Claims of Plaintiff's '852 Patent


said first end of said outer tube having a selectively actuatable detent configured to engage said inner tube at a selected position along the length of said inner tube,



Examples of Defendants' Infringing Products (Model 6016 – 2 tubes; Model 6317 – 3 tubes)

In that same picture, the red arrow points to a black housing on the first end of the outer tube. That black housing on that end of Defendants' outer tube holds Defendants' actuatable detent that engages Defendants' inner tube at one of the holes a user selects along the length of Defendants' inner tube.




[Above, Defendant Barrett Conrad demonstrates how to assemble Defendants' lever/button and spring into Defendants' black collar/housing on the first end of Defendants' outer tube, to operate Defendants' actuatable detent] [SOURCE: <https://www.youtube.com/watch?v=ldpzcFZJsW4>; at 0:33 mark]

INDEPENDENT Claims of Plaintiff's '852 Patent	Examples of Defendants' Infringing Products (Model 6016 – 2 tubes; Model 6317 – 3 tubes)
	<p data-bbox="711 285 1438 405">Below is the assembled button/lever in the black housing on the outer tube's first end, to operate Defendants' detent.</p>  A photograph showing a person's hands holding a device. The device consists of a black plastic housing with a red corrugated tube attached to it. The person is wearing a grey t-shirt and blue jeans. The background is a plain, light-colored surface.

INDEPENDENT Claims of Plaintiff's '852 Patent	Examples of Defendants' Infringing Products (Model 6016 – 2 tubes; Model 6317 – 3 tubes)
<p>said second end of said outer tube having structure for removably attaching a tool;</p>	<div data-bbox="938 279 1252 716">  </div> <p>Again in that same picture, the black arrow (in the pool water) indicates the second end of Defendants' outer tube, that includes holes for removably attaching a tool].</p> <div data-bbox="743 888 1450 1318">  </div> <p>[Defendants' attachment holes on the second end of Defendants' outer tube are illustrated in the screenshot above. This screenshot shows the tube end without a tool engaged.]</p>

INDEPENDENT Claims of Plaintiff's '852 Patent	Examples of Defendants' Infringing Products (Model 6016 – 2 tubes; Model 6317 – 3 tubes)
	 <p data-bbox="711 741 1484 867">[The screenshot above shows a leaf rake tool (on the left) engaged with Defendants' attachment holes on the second end of Defendants' outer tube]</p>
<p data-bbox="233 905 690 1455">said inner tube having first and second ends, said first end being received in said slidable relationship within said outer tube, said second end having a grip attached thereto, said selective sliding action of the tubes causing the respective distance between said grip on said inner tube and said actuatable detent on said first end of said outer tube to change;</p>	 <p data-bbox="711 1535 1463 1871">In the same picture as at the beginning of this table, Defendants' product includes an inner tube with a first end (shown slidably inserted into the outer tube) and a second end positioned above the user's head. When the user slides the tubes with respect to each other, the grip (at the top) changes its distance from the detent (located at the black housing in the middle of the pole).</p>

INDEPENDENT Claims of Plaintiff's '852 Patent	Examples of Defendants' Infringing Products (Model 6016 – 2 tubes; Model 6317 – 3 tubes)
	 <p>[Defendant Barrett Conrad expressly identifies the grip (the red piece above) on Defendants' infringing Model 6016 poles] [SOURCE: https://www.youtube.com/watch?v=ldpzcFZJsW4; at 2:20 mark]. Defendants' red grip is positioned on the second end of the inner tube, and the first end (in the direction of Mr. Conrad's right hand, or to the left side of the screenshot above) of that same inner tube is received in a sliding relationship within the outer tube (the outer tube is in Mr. Conrad's right hand, and has a black housing attached to it, that houses the button/lever detent). The sliding action allows the user to change the distance between the red grip and the button/lever detent in the black housing.</p>

INDEPENDENT Claims of Plaintiff's '852 Patent**Examples of Defendants' Infringing Products (Model 6016 – 2 tubes; Model 6317 – 3 tubes)**

In the photo below, the tubes are almost completely collapsed into each other, and the red grip is very close to the black detent housing (only one detent hole is showing on the inner tube).



Replace a Snaplite Button


04 views • May 15, 2020

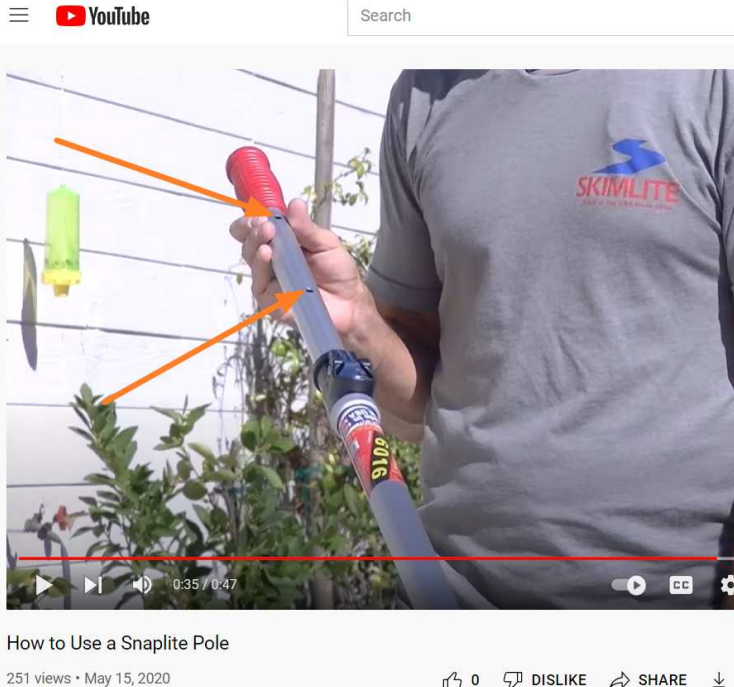
0 DISLIKE


By way of contrast, in the photo below, the user (Defendant Barrett Conrad) has actuated the detent and slid the inner tube (and its red grip) to the right as viewed below. This shows the user's selective sliding of the tubes with respect to each other changes the distance between the red grip and the black detent housing.




INDEPENDENT Claims of Plaintiff's '852 Patent	Examples of Defendants' Infringing Products (Model 6016 – 2 tubes; Model 6317 – 3 tubes)
<p>the lengths of said outer and inner tubes when engaged with each other being sufficient to permit a user gripping said first end of said inner tube to manipulate the swimming pool cleaning tool at the second end of said outer tube against the bottom of a swimming pool while the user is standing on the side of the pool.</p>	<div data-bbox="812 275 1369 909"> </div> <p>[The screenshot above is a repeat of the screenshot near the beginning of this table. Defendants' Model 6016 pole is shown above, in an extended (not collapsed) condition. The user is gripping the inner tube and manipulating a swimming pool tool (a leaf rake shown at the bottom of the screenshot). That tool is attached to the second end of the outer tube, and the user is manipulating it against the bottom of the swimming pool in the screenshot, as the user stands on the side of the pool. The lengths of the outer and inner tubes are sufficient to permit the user to use the pole in this manner]</p>

INDEPENDENT Claims of Plaintiff's '852 Patent	Examples of Defendants' Infringing Products (Model 6016 – 2 tubes; Model 6317 – 3 tubes)
<p>2. A telescoping pole apparatus, including:</p>	 <p>Defendants' poles are telescoping, as shown above and described further above.</p>
<p>an outer tube having first and second ends, said first end of the outer tube having a collar associated therewith, said collar containing a selectively actuatable detent, said second end of said outer tube having structure for removably attaching a tool;</p>	<p>[This is virtually a repeat of a corresponding Claim 1 limitation above, so Plaintiff incorporates by reference the corresponding photographs and information above.]</p>

INDEPENDENT Claims of Plaintiff's '852 Patent	Examples of Defendants' Infringing Products (Model 6016 – 2 tubes; Model 6317 – 3 tubes)
<p>an inner tube having first and second ends, said first end of said inner tube including a grip attached to the inner tube for a user to grasp and manipulate the apparatus, said second end of said inner tube being slidably received in the first end of the outer tube through an opening in said collar, said inner tube having a plurality of detent holes positioned to be engaged with said actuatable detent,</p>	<p>[Most of this portion of the claim also is virtually a repeat of a corresponding Claim 1 limitation above, so Plaintiff incorporates by reference the corresponding photographs and information above.]</p> <p>Defendants' infringing poles have a plurality of detent holes in the inner tube, to engage with the actuatable detent. Two of them are shown on the pole below held by Defendant Barrett Conrad, at the orange arrows in the screenshot below (from Defendants' aforementioned May 15, 2020 YouTube video):</p>  <p>The screenshot shows a YouTube video player. The video title is 'How to Use a Snaplite Pole'. The video shows a person wearing a grey t-shirt with a 'SKIMLITE' logo, holding a grey pole. Two orange arrows point to small holes on the pole. The video player interface shows a progress bar at 0:35 / 0:47, and the video has 251 views and was uploaded on May 15, 2020.</p>

INDEPENDENT Claims of Plaintiff's '852 Patent	Examples of Defendants' Infringing Products (Model 6016 – 2 tubes; Model 6317 – 3 tubes)
<p>said inner tube being a single wall tube that is hollow along at least substantially its length between said first and second ends of said inner tube; and</p>	<div data-bbox="812 279 1372 913">  </div> <p>Defendants' inner tubes (such as shown above) are single wall tubes that are hollow along at least substantially their length between their first and second ends.</p>

INDEPENDENT Claims of Plaintiff's '852 Patent	Examples of Defendants' Infringing Products (Model 6016 – 2 tubes; Model 6317 – 3 tubes)
<p>said inner tube configured to slide within said outer tube to a selectable position relative to the outer tube, at which position said detent is configured to temporarily engage and hold said inner tube.</p>	 <p>Defendants' inner tube is configured to slide within the outer tube to a selectable position relative to the outer tube, at which position the detent is configured to temporarily engage and hold the inner tube. In the photograph above, the user has slid the inner tube to a selected position, temporarily engaged the detent into one of the plurality of detent holes in the inner tube, and is using the pole (at that selected/engaged/held position) to clean the pool.</p>
<p>20. A telescoping pole apparatus, including:</p>	<p>Defendants' infringing poles are telescoping pole apparatus.</p>

INDEPENDENT Claims of Plaintiff's '852 Patent

an outer tube having first and second ends, said first end of said outer tube having a collar associated therewith, said collar containing a selectively actuatable detent, said second end of said outer tube having structure for removably attaching a tool;

Examples of Defendants' Infringing Products (Model 6016 – 2 tubes; Model 6317 – 3 tubes)



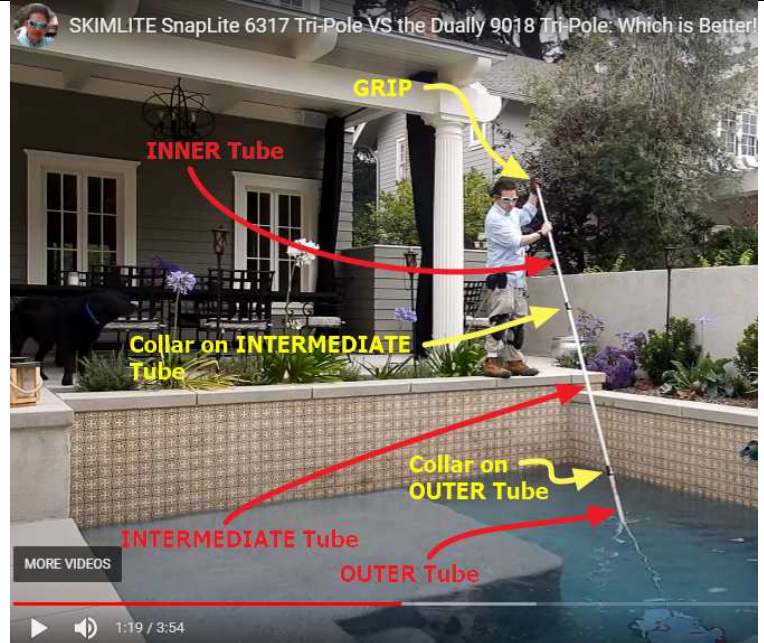
[From: <https://youtu.be/u5hTKelagiE?t=79>]

Because of the “intermediate tube” element in this claim, Plaintiff’s illustrations here are directed to examples of Defendants’ 3-piece infringing poles (ones that include an “intermediate tube”). As for the individual elements in Defendants’ 3-piece infringing poles (detent, collar, tube, plurality of detent holes, etc.), those generally correspond to the elements shown in other claims in this table. In the photograph above of Defendants’ 6317 pole, the outer tube’s first end has a collar containing a selectively actuatable detent, and the outer tube’s second end is in the pool water and includes structure for removably attaching a tool (with a tool shown attached).

INDEPENDENT Claims of Plaintiff's '852 Patent

an inner tube having first and second ends, said first end of said inner tube including a grip attached to the inner tube for a user to grasp and manipulate the apparatus;

Examples of Defendants' Infringing Products (Model 6016 – 2 tubes; Model 6317 – 3 tubes)



As shown above, Defendants' 6317 pole has an inner tube with a first end including an attached grip for a user to grasp and manipulate the pole.

INDEPENDENT Claims of Plaintiff's '852 Patent

an intermediate tube slidably interposed between said inner and outer tubes, said intermediate tube having first and second ends, said first end of said intermediate tube slidably received in the first end of said outer tube through an opening in said collar, said intermediate tube having a plurality of detent holes positioned to be engaged with said actuatable detent of said outer tube's collar, said second end of said intermediate tube having a collar associated therewith, said collar containing a selectively actuatable detent;

Examples of Defendants' Infringing Products (Model 6016 – 2 tubes; Model 6317 – 3 tubes)

As shown above, Defendants' 6317 pole has an intermediate tube slidably interposed between the inner and outer tubes. The intermediate tube has a first end slidably received in the first end of said outer tube through an opening in the outer tube's collar. The intermediate tube has a plurality of detent holes positioned to be engaged with the actuatable detent of the outer tube's collar. The intermediate tube has a second end with a collar that contains a selectively actuatable detent (labeled above as "Collar on INTERMEDIATE Tube").

INDEPENDENT Claims of Plaintiff's '852 Patent

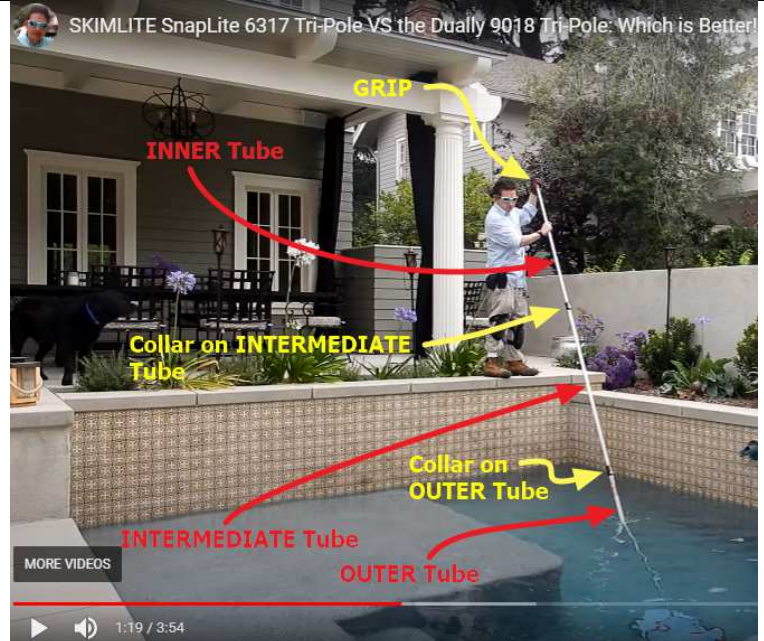
said second end of said inner tube being slidably received in the second end of said intermediate tube through an opening in said intermediate tube's collar, said inner tube having a plurality of detent holes positioned to be engaged with said actuatable detent of said intermediate tube's collar;

Examples of Defendants' Infringing Products (Model 6016 – 2 tubes; Model 6317 – 3 tubes)

As shown above, Defendants' 6317 pole has an inner tube with a second end (opposite the attached grip) that is slidably received in the second end of the intermediate tube through an opening in said intermediate tube's collar, and the inner tube has a plurality of detent holes positioned to be engaged with the actuatable detent of the intermediate tube's collar.

INDEPENDENT Claims of Plaintiff's '852 Patent

said intermediate tube configured to slide within said outer tube to a selectable position relative to said outer tube, at which position said detent of said outer tube is configured to temporarily engage and hold said intermediate tube; and

Examples of Defendants' Infringing Products (Model 6016 – 2 tubes; Model 6317 – 3 tubes)

As shown above, Defendants' 6317 pole has an intermediate tube configured to slide within the outer tube to a selectable position relative to the outer tube. At that position (such as shown above), the detent of the outer tube temporarily engages and holds the intermediate tube.

INDEPENDENT Claims of Plaintiff's '852 Patent

said inner tube configured to slide within said intermediate tube to a selectable position relative to said intermediate tube, at which position said detent of said intermediate tube is configured to temporarily engage and hold said inner tube.

Examples of Defendants' Infringing Products (Model 6016 – 2 tubes; Model 6317 – 3 tubes)

As shown above, Defendants' 6317 pole has an inner tube configured to slide within the intermediate tube to a selectable position relative to the intermediate tube. At that position (such as shown above), the detent of the intermediate tube temporarily engages and holds the inner tube.

21. An improved telepole device, comprising:



Defendants' poles are telescoping pole devices.


INDEPENDENT Claims of Plaintiff's '852 Patent

an outer tube element having first and second ends, said first end of the outer tube element having a collar element associated therewith, said collar element containing a detent means, said second end of the outer tube having attachment means for removably attaching a tool;

Examples of Defendants' Infringing Products (Model 6016 – 2 tubes; Model 6317 – 3 tubes)

Much of this claim is already illustrated in this table, in connection with Claim 1 above. As further shown as black elements below, Defendants' poles include on the outer tube a collar element:



INDEPENDENT Claims of Plaintiff's '852 Patent	Examples of Defendants' Infringing Products (Model 6016 – 2 tubes; Model 6317 – 3 tubes)
	<p>and Defendants' collar element contains a detent means:</p>  <p>[Above, Defendant Barrett Conrad demonstrates how to assemble Defendants' lever/button and spring into Defendants' black collar/housing on the first end of Defendants' outer tube, to operate Defendants' actuatable detent] [SOURCE: https://www.youtube.com/watch?v=ldpzcFZJsW4; at 0:33 mark]</p>
an inner tube element having first and second ends;	[This is virtually a repeat of a corresponding Claim 1 limitation above, so Plaintiff incorporates by reference the corresponding photographs and information above.]


INDEPENDENT Claims of Plaintiff's '852 Patent	Examples of Defendants' Infringing Products (Model 6016 – 2 tubes; Model 6317 – 3 tubes)
<p>said second end of said inner tube element being received in the first end of the outer tube through an opening in said collar element;</p>	<p>[This is virtually a repeat of a corresponding Claim 1 limitation above, so Plaintiff incorporates by reference the corresponding photographs and information above.] This photograph (from above) shows Defendants' second end of their inner tube element being received in the first end of the outer tube through an opening in their black collar element:</p> 
<p>wherein said inner tube element is configured to readily slide within said outer tube element to a selected position along the length of the outer tube, and wherein said detent means is configured to temporarily lock the inner tube in that selected position within the outer tube.</p>	<p>[This is virtually a repeat of a corresponding Claim 1 limitation above, so Plaintiff incorporates by reference the corresponding photographs and information above.]</p>

EXHIBIT D

Copying by Defendants and Other Competitors

Below is a true and correct copy of further excerpts from U.S. Patent Office Records, Appl. Ser. No. 15/708,038 (from which Plaintiff's '852 Patent issued); Third Supplemental Amendment and Response filed November 14, 2019, at pages 9, 10, 137, 138, and 139:

File No. RESH-P3841.4

Serial No. 15/708,038

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3. Skimlite Began Its Copying at Least as Early as 2015	137
a) Skimlite's Subsequent Patent Application for its Copycat Poles Provides Further Evidence of Copying	138
b) Skimlite/Conrad's Immediate "Revisions" of Their Products (Just 18 Days After Filing Their Patent Application) Also Provides Even Further Evidence of Copying of Applicant's Inventions/Products	144
4. ProTuff/Henry Began Copying Efforts as Early as July 2016 by Filing Patent Application for its Copycat Poles	151
a) ProTuff/Henry's ORIGINAL 2016 Pole/Patent Application Includes Very Closely Spaced Adjustment Holes on its Inner Pole	153
b) Around 2019, ProTuff/Henry CHANGED Its Pole to More Closely Copy Applicant's Inventions/Products	158
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d) The ProTuff/Henry Patent/Pole Has a Second Pin/Button/Track on Its Inner Pole, That Apparently Serves No Function Except to Make it Look LESS Like They Copied Applicant's Inventions	183
5. AquaEZ President Admitted Copying in November 2016	185
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Serial No. 15/708,038

Oreq's "NEW" Pole Feature (from Oreq's 2015 catalog above)	Applicant's patent application (exemplary disclosures)
	ring, but it can make the compression ring very difficult to loosen and painful to the user's hands to twist the compression ring either to tighten or loosen it. (p. 7, l. 10-13)

In addition, pool man Dave Goulart confirms seeing Oreq's copycat pole at that September 2015 trade show, and seeing the features that Oreq copied from Applicant's products/inventions (Goulart par. 11-19).

3. Skimlite Began Its Copying at Least as Early as 2015

According to its own testimony in Federal Court, Skimlite began its copying of Applicant's invention in 2015. In that regard, below is an excerpt from

Skimlite's related sworn court testimony in April 2018 (confirming that Skimlite

File No. RESH-P3841.4

Serial No. 15/708,038

prosecution excerpts below, in an Office Action just three months ago **the Patent Office rejected all of Skimlite's currently pending patent application claims based on Applicant's inventions.**

Skimlite filed its U.S. Pat. Appl. Ser. No. 15/932,534 application in early 2018, just a few weeks after Applicant's company sued Skimlite for patent infringement.²⁸ However, because Skimlite's application was published only a few weeks ago (in September 2019), Applicant only became aware of it very recently (Resh Second Decl., par. 22). Below are the front page and other excerpts from

²⁸ As mentioned in Applicant's other filings, Applicant's company served a Complaint for Skimlite infringing Applicant's previously-issued related patent (U.S. Pat. No. 9,764,458) on February 9, 2018. Skimlite filed its patent application for that copycat pole one month later, on March 12, 2018.